

COUNCIL OF THE COUNTY OF MAUI

# INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

December 19, 2014

Committee  
Report No. \_\_\_\_\_

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Infrastructure and Environmental Management Committee, having met on December 5, 2014, makes reference to County Communication 14-236, from the Economic Development Director, transmitting the following:

1. A proposed resolution entitled "AUTHORIZING THE FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT, PURSUANT TO SECTION 3.40.180, MAUI COUNTY CODE".

The purpose of the proposed resolution is to grant a five-year extension of a license to Hitachi Advanced Clean Energy Corporation ("Hitachi"), for the operation and maintenance of a stationary lead-acid battery testing facility on a portion of property located at the Kihei Wastewater Treatment Plant, 480 Piilani Highway, Kihei, Maui, Hawaii.

2. A proposed resolution entitled "AUTHORIZING THE FIRST AMENDMENT TO SVC LICENSE AGREEMENT, PURSUANT TO SECTION 3.40.180, MAUI COUNTY CODE".

The purpose of the proposed resolution is to grant a five-year extension of a license to Hitachi for the operation and maintenance of a Static Var Compensator ("SVC") on a portion of property located at the Department of Public Works, Highways Division, Makawao Garage, 1285 Makawao Avenue, Makawao, Maui, Hawaii.

Your Committee notes Section 3.40.180(A), Maui County Code, requires Council approval of any renewal, or extension, of a lease of County real property when the Director of Finance awards the lease without calling for public bids.

At the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted the following:

COUNCIL OF THE COUNTY OF MAUI

# INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

Page 2

Committee  
Report No. \_\_\_\_\_

1. A revised proposed resolution entitled "AUTHORIZING THE FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT".

The purpose of the revised proposed resolution is to authorize an extension, through July 31, 2019, of the Battery License Agreement dated August 1, 2013, with AEC-USA, Inc., now known as Hitachi, for the operation and maintenance of a stationary lead-acid battery testing facility on a portion of the Kihei Wastewater Treatment Plant site, located at 480 Piilani Highway, Kihei, Maui, Hawaii.

2. A revised proposed resolution entitled "AUTHORIZING THE FIRST AMENDMENT TO THE SVC LICENSE AGREEMENT".

The purpose of the revised proposed resolution is to authorize an extension, through July 31, 2019, of the SVC License Agreement dated August 1, 2013, with AEC-USA, Inc., now known as Hitachi, for the operation and maintenance of an SVC and related cables and utility lines on a portion of the site of the Department of Public Works, Highways Division, Makawao Garage, 1285 Makawao Avenue, Makawao, Maui, Hawaii.

Your Committee received presentations from the County's Energy Commissioner and Hitachi relating to JUMPSmartMaui ("project").

The Energy Commissioner informed your Committee the Battery License Agreement allows for the operation and maintenance of a stationary lead-acid battery housed within a single, 20-foot container and related safety equipment. The lead-acid battery functions as a power storage system to stabilize power outputs from renewable energy sources.

The SVC License Agreement allows for the operation of an SVC housed within two 20-foot containers, and related cables and utility lines. The function of an SVC is to control the voltage of an electrical distribution network by managing the network's power demands against renewable energy inputs.

A representative of Hitachi informed your Committee the project began in 2011 and will conclude in the spring of 2016. The purpose of the project is to demonstrate smart-grid technology and an islandwide electric vehicle management system aimed at

COUNCIL OF THE COUNTY OF MAUI

# INFRASTRUCTURE AND ENVIRONMENTAL MANAGEMENT COMMITTEE

Page 3

Committee  
Report No. \_\_\_\_\_

improving energy efficiency and integrating more renewable energy from solar and wind power into the County's energy system.

Project stakeholders include the County, Hitachi, Maui Economic Development Board, Inc., and Maui Electric Company, Limited. The project is funded by the Japanese government through its New Energy and Industrial Technology Development Organization, a public research and development management agency.

The Energy Commissioner further informed your Committee that Hitachi pays rent as part of the license agreement and approval of the license agreement extensions will allow the County to continue to participate in the project.

Your Committee voted 4-0 to recommend adoption of the revised proposed resolutions and filing of the communication. Committee Chair Cochran, Vice-Chair Crivello, and members Carroll and Couch voted "aye". Committee members Guzman, Hokama, and White were excused.

Your Infrastructure and Environmental Management Committee RECOMMENDS the following:

1. That Resolution \_\_\_\_\_, as revised herein and attached hereto, entitled "AUTHORIZING THE FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT", be ADOPTED;
2. That Resolution \_\_\_\_\_, as revised herein and attached hereto, entitled "AUTHORIZING THE FIRST AMENDMENT TO THE SVC LICENSE AGREEMENT", be ADOPTED; and
3. That County Communication 14-236 be FILED.

COUNCIL OF THE COUNTY OF MAUI  
**INFRASTRUCTURE AND ENVIRONMENTAL  
MANAGEMENT COMMITTEE**

Page 4

Committee  
Report No. \_\_\_\_\_

This report is submitted in accordance with Rule 8 of the Rules of the Council.



\_\_\_\_\_  
ELLE COCHRAN, Chair

iem:cr:14062aa:jkm

# Resolution

No. \_\_\_\_\_

## AUTHORIZING THE FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT

WHEREAS, the County of Maui and AEC-USA, INC. ("AEC"), entered into that Battery License Agreement dated August 1, 2013, attached hereto as Exhibit "1" and by reference made a part hereof, for an area at the Kihei Wastewater Treatment Plant, identified as TMK: (2) 2-2-024:011 ("Property"); and

WHEREAS, AEC has installed, operated, and maintained a battery utilized for energy storage testing purposes on the Property; and

WHEREAS, in accordance with Section 3.40.180, Maui County Code, the term of the license was for a period of twelve months, with any extension of tenancy requiring approval by the County Council; and

WHEREAS, effective the week of July 21, 2014, AEC changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION ("HITACHI"); and

WHEREAS, the County and HITACHI desire to extend the license period for an additional five years; and

WHEREAS, the First Amendment to the Battery License Agreement, attached hereto as Exhibit "2" and by reference made a part hereof, extends the term under the agreement for a period of five years, or until July 31, 2019; now, therefore,

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

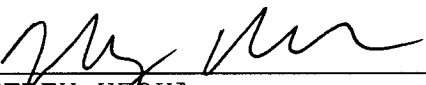
**Resolution No. \_\_\_\_\_**

1. That it hereby approves a five-year extension, through July 31, 2019, of the Battery License Agreement to HITACHI ADVANCED CLEAN ENERGY CORPORATION; and

2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute the First Amendment to the Battery License Agreement; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Department of Environmental Management, and HITACHI ADVANCED CLEAN ENERGY CORPORATION.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UFOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\JTU\RESOS\Battery License Agreement (First Amendment).wpd

## BATTERY LICENSE AGREEMENT

Effective as of August 1, 2013 (the "Effective Date"), COUNTY OF MAUI, a political subdivision of the State of Hawaii ("Licensor"), and AEC-USA, INC., a Hawaii corporation ("Licensee"), agree as follows (this "Agreement"):

1. **Background.** Licensor is the owner of the property described in attached Exhibit "A" (the "Property"). Licensee and Licensor desire that Licensee have the right to use a portion of the Property to install, operate and maintain improvements, personal property and facilities necessary to operate Licensee's stationary lead-acid battery and related cables and utility lines (collectively, "Licensee's Facilities").

2. **License.** Licensor licenses to Licensee a certain portion of the Property 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 shall be a month-to-month tenancy for a period not to exceed one year. Any renewal or extension shall be subject to Maui County Council approval by resolution.

4. **Permitted Use.** The License Area may be used by Licensee for a stationary lead-acid battery location 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 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", any gross deviation from Exhibit "B" shall require Licensor's approval in writing. Licensee shall have the right to replace or upgrade Licensee's Facilities at any time during the term of this Agreement. 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 property of Licensee and/or such third parties who have licensed the use of such property to Licensee, as the case may be. Licensee shall have the right to remove Licensee's Facilities upon termination of this Agreement. Licensee's Facilities shall be contained within the License Area. Notwithstanding the foregoing, in case Licensor intends to have ownership of the Licensee's Facilities after termination of this Agreement, Licensor may discuss with Licensee the terms and conditions of the transfer. In the event that Licensor concludes not to obtain the Licensee's Facilities at the end of the license term, Licensee shall pay all rent from the Effective Date through the

date of termination of this Agreement, at the rate of thirty three US dollars and seventy nine cents(USD 33.79) per month.

(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 ten (10) 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. Licensee shall be responsible for the securing the License Area, ensuring the safety of all users of the License Area and the Licensor's surrounding property.

(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 (i) cause its use of such utility sources to be separately metered and (ii) reimburse the cost of its use of such utility sources to Licensor within twenty (20) days after receipt of Licensor's invoice for such actual utility cost with a copy of the relevant billing from the applicable utility provider. If there are not sufficient utility sources located on the Property to operate Licensee's Facilities, Licensor may 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 and (ii) Licensee shall cause its use of such utility sources to be separately metered and billed directly to Licensee by the applicable utility provider.

(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 on a 24-hours-a-day, 7-days-a-week basis.

(f) Licensor shall have the right to restrict access to the License Area for health, safety, welfare reasons. In case of such restriction, Licensor shall so notify Licensee in writing as soon as reasonably possible.

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 or such third parties who have licensed the use of such property to Licensee will pay any personal property taxes assessed on, or any portion of such taxes attributable to, Licensee's Facilities. Licensors 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 to vacate by Licensor to Licensee.

**(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.

**9. Insurance.** In order to protect itself as well as the Licensor under the indemnification agreement set forth below, Licensee shall obtain, pay for, and keep in force throughout the period of this Agreement comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Licensor, its officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Licensor, its officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with this Agreement.

The insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of site construction work, Licensee shall furnish Licensor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Agreement, Licensee shall, upon renewal of the insurance policy, provide Licensor with a copy of the renewed insurance policy certificate together with the required endorsements.

The insurance policy shall expressly state that in the event that the policy is canceled or terminated prior to the expiration date, notice of said cancellation or termination shall be delivered to Licensor.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of Licensor, Licensee shall obtain and maintain such coverage.

**10. Indemnification.** Licensee shall indemnify and save Licensor, its employees, and agents, harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the this Agreement or arising from the construction of Licensee's improvements, installation or use of Licensee's utilities, and Licensee's access to the Property, from the failure of Licensee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Agreement, or from any act or negligence or omission to act of Licensee, its agents, contractors, servants, employees, concessionaires or licensees in or about the Property, or in any connection with this Agreement. In case any action or proceeding be brought against Licensor (in addition to Licensee) by reason of any such claim, even though such claim be based on alleged fault of Licensor, Licensee agrees to pay the reasonable costs and expenses thereof, secured against Licensor by reason of such action or proceeding. The obligations of Licensee under this section shall survive the expiration or earlier termination of this Agreement without limitation.

**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:

with a copy to:

AEC-USA, Inc.  
Attn:Munehisa Matsumoto  
2-2-10 Kume, Naha, Okinawa, 900-0033  
Japan

AEC Co.,Ltd  
Atten:Munehisa Matsumoto  
2-2-10 Kume,Naha, Okinawa,Japan  
E-mail:matsumoto@aec-oki.co.jp

If to Licensor, to:

with a copy to:

Director of Finance  
County of Maui  
200 S. High Street  
Wailuku HI 96793

Office of Economic Development  
County of Maui  
200 S. High Street  
Wailuku HI 96793

**12. Quiet Enjoyment, Title and Authority.** Licensor covenants and warrants to Licensee that (i) Licensor has full right, power and authority to execute this License; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Licensee which will not interfere with Licensee's rights to or use of the License Area; and (iii) execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of any mortgage, license, or other agreement binding on Licensor. Licensor covenants that at all times during the term of this License, unless sooner terminated as provided herein, Licensee's quiet enjoyment of the License Area shall not be disturbed.

**13. 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). 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.

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

**15. No Assignment.** This License is not assignable, unless otherwise agreed in writing by Licensor and Licensee.

**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) The substantially prevailing party in any litigation arising under this Agreement shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(c) 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.

(d) 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 and warrant 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.

(i) The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the License Area location within the Property and site plan) may be attached to this License in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and B, which may have been attached hereto in preliminary form, may be replaced by Licensee with such final, more complete exhibit(s).


*[Signatures begin on the following page]*

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

COUNTY OF MAUI

APPROVED AS TO FORM  
AND LEGALITY


  
Deputy Corporation Counsel  
County of Maui

By 

Name: DANILO F. AGSALOG  
Title: Director of Finance

Licensor

AEC-USA, INC., a Hawaii corporation

By 

Name: Munehisa Matsumoto  
Title: President

Licensee

**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**

# JAPAN-UNITED STATES ISLAND SMART GRID DEMONSTRATION PROJECT KIHEI WASTEWATER TREATMENT PLANT

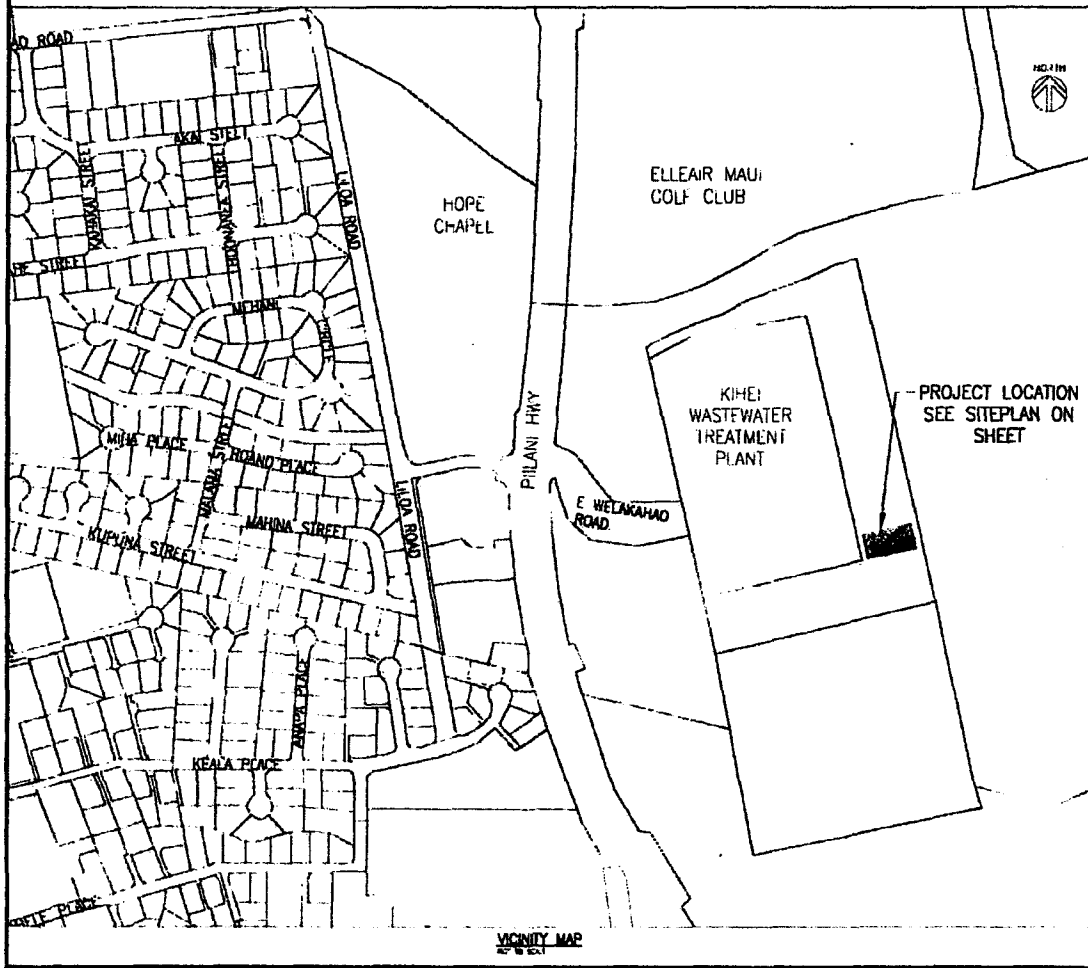
480 PILANI HWY, KIHEI, HI 96753

TMK: 2-22-024 011

AREA: 0.1 AC.



SSFM Interiors  
433 Rouse Street,  
Honolulu, Hawaii 96813



**PROJECT DATA**

**SCOPE OF WORK**

**INDEX OF DRAWINGS**

- GENERAL:
- G-1 TITLE SHEET
  - G-2 GENERAL NOTES
  - G-3 SITE PLAN
  - G-4 EMISSION CONTROL AND FENCE DETAILS
- STRUCTURAL:
- S-1 GENERAL NOTES, FOUNDATION DETAILS, FLOOR PLANS, ELEVATIONS AND SECTIONS
- ELECTRICAL:
- E-1 ELECTRICAL SITE PLAN
  - E-2 UTILITY SINGLE LINE DIAGRAM/SERVICE EQUIPMENT DETAILS
  - E-3 CONTAINER LAYOUT/ELECTRICAL THREE LINE DIAGRAMS
  - E-4 FIRE SUPPRESSION SYSTEM DETAILS

**BUILDING CODES**

Japan-United States  
Island Smart Grid  
Demonstration  
Battery Storage  
Facility

Kihei Wastewater  
Treatment Plant

TMK: 2-22-024 011  
LOCATION: Kihei

TITLE SHEET

DATE: 08/11/2011

PROJECT NO.: 11-001  
SHEET NO.: 1 OF 1

EXHIBIT "1"

Page 9 of 11

**EXHIBIT "B"**

**DESCRIPTION OF THE LICENSE AREA AND SITE PLAN**





FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT

This FIRST AMENDMENT TO BATTERY LICENSE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as "Licensor", and HITACHI ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation, whose mailing address is 285 W. Kaahumanu Avenue, Suite 102, Kahului, Maui, Hawaii 96732, hereinafter referred to as the "Licensee", and collectively referred to as "Parties."

R E C I T A L S:

1. WHEREAS, the Licensor and AEC-USA, INC., entered into the Battery License Agreement effective August 1, 2013, hereinafter referred to as "Agreement", on file with the Director of Finance and incorporated herein by reference; and

2. WHEREAS, AEC-USA, INC., changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION, effective the week of July 21, 2014; and

3. WHEREAS, the Parties wish to amend said Agreement to provide for a term extension.

AMENDMENT OF AGREEMENT

1. Section 3., Term, is amended to read as follows:

"3. Term. The term of this Agreement shall commence on August 1, 2013 and shall be a month-to-month tenancy for a period of six years. Any renewal or extension shall be subject to Maui County Council approval by resolution."

2. Section 11., Notices, is amended to read as follows:

"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  
285 w. Kaahumanu Avenue, Suite 102  
Kahului HI 96732

If to Lessor, to:

Director of Finance  
County of Maui  
200 S. High Street  
Wailuku HI 96793

With a copy to:

Office of Economic Development  
County of Maui  
200 S. High Street  
Wailuku HI 96793"

3. All other provisions of this Agreement, as amended, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Agreement by their signatures, on the dates below, to be effective as of the date of last signature hereto.

**[EXECUTION PAGES TO FOLLOW]**

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**


Licensors:

COUNTY OF MAUI

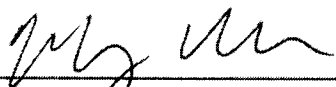
By \_\_\_\_\_  
DANILO F. AGSALOG  
Its Director of Finance

Date \_\_\_\_\_

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
KYLE K. GINOZA  
Director, Department of  
Environmental Management

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY HEOKA  
Deputy Corporation Counsel  
County of Maui

S:\ALL\TUGED\AEC-USA and 1 Battery Lic Agmt. revised.wpd

I hereby represent and warrant that I have the legal right and authority to execute this Agreement on behalf of the Licensee.

Licensee:

HITACHI ADVANCED CLEAN ENERGY  
CORPORATION

By J. Hatsumoto  
(Signature)

Takenori Hatsumoto  
(Print Name)

Its Vice President  
(Title)

Date 2014. Oct. 15

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# Resolution

No. \_\_\_\_\_

## AUTHORIZING THE FIRST AMENDMENT TO THE SVC LICENSE AGREEMENT

WHEREAS, the County of Maui and AEC-USA, INC. ("AEC"), entered into that SVC License Agreement dated August 1, 2013, attached hereto as Exhibit "1" and by reference made a part hereof, for an area at the Department of Public Works, Highways Division, Makawao Garage, identified as TMK: (2) 2-4-017:021 ("Property"); and

WHEREAS, AEC has installed, operated, and maintained its Static Var Compensator on the Property; and

WHEREAS, in accordance with Section 3.40.180, Maui County Code, the term of the license was for a period of twelve months, with any extension of tenancy requiring approval by the County Council; and

WHEREAS, effective the week of July 21, 2014, AEC changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION ("HITACHI"); and

WHEREAS, the County and HITACHI desire to extend the License period for an additional five years; and

WHEREAS, the First Amendment to the SVC License Agreement, attached hereto as Exhibit "2" and by reference made a part hereof, extends the term under the agreement for a period of five years, or until July 31, 2019; now, therefore,

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

**Resolution No. \_\_\_\_\_**

1. That it hereby approves a five-year extension, through July 31, 2019, of the SVC License Agreement to HITACHI ADVANCED CLEAN ENERGY CORPORATION; and

2. That it does hereby authorize the Mayor, or the Mayor's duly authorized representative, to execute the First Amendment to the SVC License Agreement; and

3. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Department of Public Works, and HITACHI ADVANCED CLEAN ENERGY CORPORATION.

APPROVED AS TO FORM  
AND LEGALITY:



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JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui  
S:\ALL\JTU\RESOS\SVC License Agreement (First Amendment).wpd

**SVC LICENSE AGREEMENT**

Effective as of August 1, 2013 (the "Effective Date"), COUNTY OF MAUI, a political subdivision of the State of Hawaii ("Licensor"), and AEC-USA, INC., a Hawaii corporation ("Licensee"), agree as follows (this "Agreement"):

1. **Background.** Licensor is the owner of the property described in attached Exhibit "A" (the "Property"). Licensee and Licensor desire that Licensee have the right to use a portion of the Property to install, operate and maintain improvements, personal property and facilities necessary to operate Licensee's Static Var Compensator(SVC) and related cables and utility lines (collectively, "Licensee's Facilities").

2. **License.** Licensor licenses to Licensee a certain portion of the Property 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 shall be a month-to-month tenancy for a period not to exceed one year. Any renewal or extension shall be subject to Maui County Council approval by resolution.

4. **Rent.** The license fee for the License Area shall be payment of US nine hundred ninety one dollars and eighteen cents (USD 991.18) per month. Licensee shall send the first payment of One thousand six hundred ninety four and sixty cents(USD1,694.60) for the license fee from the July 10,2013(prorated) through August 31, 2013, by July 31, 2013. Thereafter all payments are due by the 15th day of the month that is covered by the monthly payment. Licensee shall make all payments by bank wire transfer to Licensor's bank account as follows:

Bank :Bank of Hawaii, 2105 Main Street, Wailuku, Hawaii 96793  
Tel:808-856-2610, Fax:808-856-2615  
Account Name :County of Maui,200 South High Street, Wailuku, Hawaii 96793  
Account Number:0060-000050  
Swift Code Number:BOHIUS77  
Routing Number:121301028

5. **Permitted Use.** The License Area may be used by Licensee for a Static Var Compensator(SVC) location 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 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.



**6. 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", any gross deviation from Exhibit "B" shall require Licensor's approval in writing. Licensee shall have the right to replace or upgrade Licensee's Facilities at any time during the term of this Agreement. 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 property of Licensee and/or such third parties who have licensed the use of such property to Licensee, as the case may be. Licensee shall have the right to remove Licensee's Facilities upon termination of this Agreement. Licensee's Facilities shall be contained within the License Area. Notwithstanding the foregoing, in case Licensor intends to have ownership of the Licensee's Facilities after termination of this Agreement, Licensor may discuss with Licensee the terms and conditions of the transfer.

**(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 ten (10) 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. Licensee shall be responsible for the securing the License Area, ensuring the safety of all users of the License Area and the Licensor's surrounding property.

**(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 (i) cause its use of such utility sources to be separately metered and (ii) reimburse the cost of its use of such utility sources to Licensor within twenty (20) days after receipt of Licensor's invoice for such actual utility cost with a copy of the relevant billing from the applicable utility provider. If there are not sufficient utility sources located on the Property to operate Licensee's Facilities, Licensor may 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 and (ii) Licensee shall cause its use of such utility sources to be separately metered and billed directly to Licensee by the applicable utility provider.

**(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 on a 24-hours-a-day, 7-days-a-week basis.

(f) Licensor shall have the right to restrict access to the License Area for health, safety, welfare reasons. In case of such restriction, Licensor shall so notify Licensee in writing as soon as reasonably possible.

**7. 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.

**8. Taxes.** Licensee or such third parties who have licensed the use of such property to 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.

**9. Termination.**

(a) This Agreement may be terminated without any penalty or further liability upon thirty (30) days written notice to vacate by Licensor to Licensee.

(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.

**10. Insurance.** In order to protect itself as well as the Licensor under the indemnification agreement set forth below, Licensee shall obtain, pay for, and keep in force throughout the period of this Agreement comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Licensor, its officers, employees and agents as "Additional Named Insured", and shall include a duty to defend Licensor, its officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with this Agreement.

The insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$1,000,000;
- 2) No erosion of limit by payment of defense costs; and
- 3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of site construction work, Licensee shall furnish Licensor with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the

specified termination date of this Agreement, Licensee shall, upon renewal of the insurance policy, provide Licensor with a copy of the renewed insurance policy certificate together with the required endorsements.

The insurance policy shall expressly state that in the event that the policy is canceled or terminated prior to the expiration date, notice of said cancellation or termination shall be delivered to Licensor.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of Licensor, Licensee shall obtain and maintain such coverage.

**11. Indemnification.** Licensee shall indemnify and save Licensor, its employees, and agents, harmless against and from any and all suits, claims, damages, judgments, costs and expense, including reasonable attorney's fees, arising from the this Agreement or arising from the construction of Licensee's improvements, installation or use of Licensee's utilities, and Licensee's access to the Property, from the failure of Licensee to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions of this Agreement, or from any act or negligence or omission to act of Licensee, its agents, contractors, servants, employees, concessionaires or licensees in or about the Property, or in any connection with this Agreement. In case any action or proceeding be brought against Licensor (in addition to Licensee) by reason of any such claim, even though such claim be based on alleged fault of Licensor, Licensee agrees to pay the reasonable costs and expenses thereof, secured against Licensor by reason of such action or proceeding. The obligations of Licensee under this section shall survive the expiration or earlier termination of this Agreement without limitation.

**12. 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:

AEC-USA, Inc.  
Attn:Munehisa Matsumoto  
2-2-10 Kume, Naha, Okinawa, 900-0033  
Japan

with a copy to:

AEC Co.,Ltd  
Atten:Munehisa Matsumoto  
2-2-10 Kume,Naha, Okinawa,Japan  
E-mail:matsumoto@aec-oki.co.jp

If to Licensor, to:

Director of Finance  
County of Maui  
200 S. High Street  
Wailuku HI 96793

with a copy to:

Office of Economic Development  
County of Maui  
200 S. High Street  
Wailuku HI 96793

**13. Quiet Enjoyment, Title and Authority.** Licensor covenants and warrants to Licensee that (i) Licensor has full right, power and authority to execute this License; (ii) it has good and unencumbered title to the Property free and clear of any liens or mortgages, except those disclosed to Licensee which will not interfere with Licensee's rights to or use of the License Area; and (iii) execution and performance of this License will not violate any laws, ordinances, covenants, or the provisions of

any mortgage, license, or other agreement binding on Licensor. Licensor covenants that at all times during the term of this License, unless sooner terminated as provided herein, Licensee's quiet enjoyment of the License Area shall not be disturbed.

**14. 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). 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.

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

**16. No Assignment.** This License is not assignable, unless otherwise agreed in writing by Licensor and Licensee.

**17. 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) The substantially prevailing party in any litigation arising under this Agreement shall be entitled to its reasonable attorneys' fees and court costs, including appeals, if any.

(c) 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.

(d) 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 and warrant 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.

(i) The parties understand and acknowledge that Exhibit A (the legal description of the Property) and Exhibit B (the License Area location within the Property and site plan) may be attached to this License in preliminary form. Accordingly, the parties agree that upon the preparation of final, more complete exhibits, Exhibits A and B, which may have been attached hereto in preliminary form, may be replaced by Licensee with such final, more complete exhibit(s).


*[Signatures begin on the following page]*

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

APPROVED AS TO FORM  
AND LEGALITY

  
Deputy Corporation Counsel  
County of Maui

COUNTY OF MAUI

By 

Name: DANILO F. AGSALOG  
Title: Director of Finance

Licensor

AEC-USA, INC., a Hawaii corporation

By Munehisa Matsumoto

Name: Munehisa Matsumoto  
Title: President

Licensee

**EXHIBIT "A"**

**DESCRIPTION OF THE PROPERTY**





**EXHIBIT "B"**

**DESCRIPTION OF THE LICENSE AREA AND SITE PLAN**



FIRST AMENDMENT TO SVC LICENSE AGREEMENT

This FIRST AMENDMENT TO SVC LICENSE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as "Licensor", and HITACHI ADVANCED CLEAN ENERGY CORPORATION, a Hawaii corporation, whose mailing address is 285 W. Kaahumanu Avenue, Suite 102, Kahului, Maui, Hawaii 96732, hereinafter referred to as the "Licensee", and collectively referred to as "Parties."

R E C I T A L S:

1. The Licensor and AEC-USA, INC., entered into the SVC License Agreement effective August 1, 2013, hereinafter referred to as "Agreement", on file with the Director of Finance and incorporated herein by reference; and

2. WHEREAS, AEC-USA, INC., changed its name to HITACHI ADVANCED CLEAN ENERGY CORPORATION, effective the week of July 21, 2014; and

3. The Parties wish to amend said Agreement to provide for a term extension.

AMENDMENT OF AGREEMENT

1. Section 3., Term, is amended to read as follows:

"3. Term. The term of this Agreement shall commence on August 1, 2013 and shall be a month-to-month tenancy for a period of six years. Any renewal or extension shall be subject to Maui County Council approval by resolution."

2. Section 11., Notices, is amended to read as follows:

"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  
285 w. Kaahumanu Avenue, Suite 102  
Kahului HI 96732

If to Lessor, to:

Director of Finance  
County of Maui  
200 S. High Street  
Wailuku HI 96793

With a copy to:

Office of Economic Development  
County of Maui  
200 S. High Street  
Wailuku HI 96793"

3. All other provisions of this Agreement, as amended, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Parties execute this Agreement by their signatures, on the dates below, to be effective as of the date of last signature hereto.

**[EXECUTION PAGES TO FOLLOW]**

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Licensor:

COUNTY OF MAUI


By \_\_\_\_\_  
DANILO F. AGSALOG  
Its Director of Finance

Date \_\_\_\_\_

APPROVAL RECOMMENDED:

  
\_\_\_\_\_  
DAVID C. GOODE  
Director, Department of Public Works

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui

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I hereby represent and warrant that I have the legal right and authority to execute this Agreement on behalf of the Licensee.

Licensee:

HITACHI ADVANCED CLEAN ENERGY  
CORPORATION

By J. Hatanaka  
(Signature)

Takenori Hatanaka  
(Print Name)

Its Vice President  
(Title)

Date 2014. Oct. 16

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