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Attorneys for Complainant

DEPARTMENT OF HEALTH

STATE OF HAWAII

DEPARTMENT OF HEALTH,	)	DOCKET NO. 15-CA-EO-11
STATE OF HAWAII,	)	
	)	Mobile Crushing Plant
Complainant,	)	
	)	
vs.	)	
	)	
GW CONSTRUCTION,	)	
	)	
Respondent	)	
	)	

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CONDITIONAL AGREEMENT TO SIGN CONSENT ORDER


Prior to signing the attached proposed Consent Order, the Department of Health ("DOH") and GW CONSTRUCTION ("Respondent"), agree to comply with the public notice and comment provisions of Section 342B-55, Hawaii Revised Statutes ("H.R.S.").

The DOH and Respondent agree to sign the proposed Consent Order as written if no comments are submitted during the public comment period or, if after the DOH's review of the comments submitted, the DOH still concludes that the proposed Consent Order is appropriate. If DOH does not so conclude, the DOH and

Respondent will use their best efforts to agree on changes to be made. If, after a reasonable time, the DOH determines that such efforts will not result in agreement, the DOH shall set a date and time for a hearing on the issues raised by the Notice of Violation and Order in this matter and shall notify the Respondent of such hearing, pursuant to Chapter 91, H.R.S.

DATED: Honolulu, Hawaii, MAY 14 2018

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By:   
KEITH E. KAWAOKA, D.ENV.  
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, MAY 14 2018

GW CONSTRUCTION

By:   
GERALD YAMADA  
President

APPROVED AS TO FORM:

  
WILLIAM F. COOPER  
Deputy Attorney General

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	)	
vs.	)	
	)	
GW CONSTRUCTION,	)	
	)	
Respondent	)	
_____	)	

CONSENT ORDER

The Department of Health ("DOH"), State of Hawaii, and GW CONSTRUCTION ("Respondent") enter into this Consent Order pursuant to Chapter 342B, Hawaii Revised Statutes ("H.R.S."), and Air Pollution Control rules, Chapter 11-60.1, Hawaii Administrative Rules ("H.A.R.").

1. STIPULATED FACTS AND FINDINGS

Respondent is a corporation organized and existing under the laws of the State of Hawaii. Respondent owns, operates, manages and controls the Mobile Crushing Plant located at various temporary sites throughout the State of Hawaii.

On May 31, 2016, DOH issued Respondent a Notice and Finding of Violation and Order ("NOVO"), under Docket No. 15-CA-EO-11, alleging that Respondent violated Section 11-60.1-2, H.A.R.; Section 342B-11, H.R.S.; and the following conditions of Temporary Covered Source Permit ("CSP") No. 0710-01-CT:

1. Attachment II, Section D, Special Condition 1: Failed to maintain records of the visible emissions (VE) observation forms for the crushing plant and the diesel engine;
2. Attachment II, Section D, Special Condition 2: Failed to maintain records on the total tons of material processed by the crushing plant;
3. Attachment II, Section D, Special Condition 7.a: Failed to complete all requirements of the VE observation form for the diesel engine;
4. Attachment II, Section D, Special Condition 7.b: Failed to complete all requirements of the VE observation form for the fugitive emission points of the crushing plant; and
5. Attachment II, Section G: Failed to submit a location change to CAB for approval at least thirty (30) days prior to the change in location from the baseyard located at 16-212 Melekahiwa Place, Keaau to the Puna Rock Quarry located off Railroad Avenue in Keaau.

The DOH assessed an initial penalty of FOUR THOUSAND SIX HUNDRED DOLLARS AND NO CENTS (\$4,600.00) for the alleged

violations of Temporary CSP No. 0710-01-CT found under the NOVO Docket No. 15-CA-EO-11.

On June 29, 2016, the DOH and Respondent discussed, via telephone, the NOVO found under Docket No. 15-CA-EO-11. The DOH and Respondent agreed to decrease the penalty to THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$3,500.00).

The DOH and Respondent have agreed to settle their disputes without the risks of adverse findings and conclusions, or a final order or judgment after litigation.

## 2. EFFECT OF SETTLEMENT

This Consent Order and any actions taken to comply with its terms are not admissions of violation, fault, or liability by Respondent. This Consent Order settles and resolves all civil liability of Respondent to the DOH for allegedly violating Section 11-60.1-2, H.A.R., Section 342B-11, H.R.S., and all alleged violations of Temporary CSP No. 0710-01-CT, set forth in NOVO Docket No. 15-CA-EO-11. Under this Consent Order, any and all violations and claims alleged or which could have been alleged by the DOH in the NOVO shall be discharged, dismissed, waived, and released as against Respondent.

The effect of this Settlement, and the definitions, obligations, terms, conditions, and/or any and all other aspect(s) of the agreement contained in each and every paragraph

of this Consent Order, shall end and shall no longer be binding on either party, once the Consent Order is terminated pursuant to Section 12 of this Consent Order.

### 3. SETTLEMENT AMOUNT

Within thirty (30) days of the effective date of this Consent Order, Respondent shall pay THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$3,500.00) by cashier's check, made payable to the State of Hawaii and sent to the Manager of the Clean Air Branch at the address set forth in Section 4. Failure to pay the full THREE THOUSAND FIVE HUNDRED DOLLARS AND NO CENTS (\$3,500.00) within thirty (30) days of the execution of this Consent Order shall be deemed a default and a violation of this Consent Order.

4. NOTIFICATION

Whenever, under the terms of this Consent Order, notice or payment is required to be given by one party to another, such notice or payment shall be directed to the individuals specified below, at the address given, unless a party gives notice in writing to the other party that another individual has been designated to receive such communications:

Ms. Marianne Rossio, P.E.  
Manager, Clean Air Branch  
Hawaii State Department of Health  
P.O. Box 3378  
Honolulu, Hawaii 96801  
Telephone: (808) 586-4200  
Fax: (808) 586-4359

Mr. Gerald Yamada  
President  
GW Construction  
16-212 Melekauiwa Place  
Keaau, Hawaii 96749  
Telephone: (808) 966-4582

5. ACTIONS AGAINST OTHER PARTIES

This Consent Order does not limit or affect the rights of the Respondent or the DOH against any third parties.

6. AUTHORITY OF SIGNATORIES

Each undersigned representative of a party to this Consent Order certifies that he or she has full authority to enter into

the terms of this Consent Order and legally to bind the party which he or she represents.

7. BINDING EFFECT

The provisions of this Consent Order shall apply to and be binding upon the parties to this action, their officers, agents, trustees, servants, employees, successors, assignees, and attorneys, until terminated pursuant to Section 12 below. Respondent shall give notice of this Consent Order to any successors in interest prior to transfer of ownership and to any contractor performing activities contemplated by this Consent Order and shall submit a copy of each such notice to the DOH, until the Consent Order is terminated pursuant to Section 12 below.

8. ENTIRE AGREEMENT

This Consent Order sets forth the entire agreement between the parties with respect to this matter.

9. EFFECTIVE DATE

This Consent Order shall become effective as soon as it has been signed by both parties.

10. MODIFICATIONS

This Consent Order shall not be modified except in writing, signed by both parties.



11. NO TAX BENEFITS

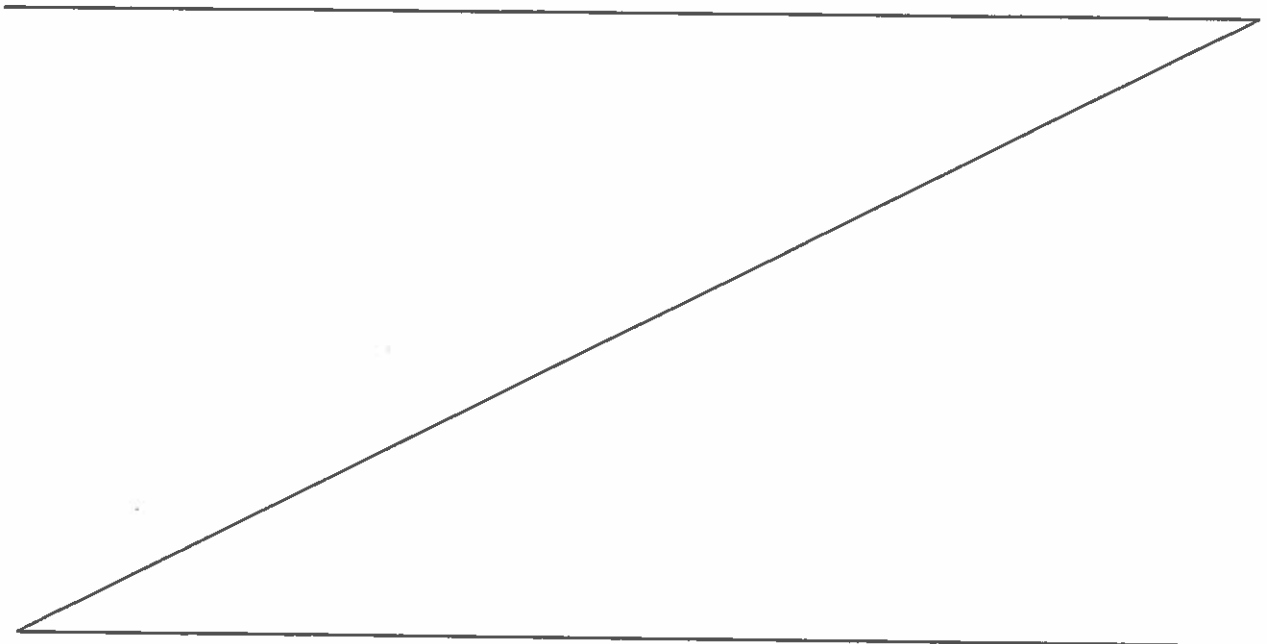
Respondent shall not deduct any of the penalty amount paid pursuant to this Consent Order from its federal or state taxable income, nor shall Respondents claim any tax credits for said penalty amount.

12. TERMINATION

Upon receipt of the payment required by Section 3 of this Consent Order, DOH shall issue a letter to Respondent acknowledging the receipt of the payment of the settlement amount, which shall terminate this Consent Order.

13. EFFECT

This Consent Order constitutes the final order in this case, replacing the NOVO under Docket No. 15-CA-EO-11, dated May 31, 2016.



14. COSTS

Each party shall bear its own costs and attorney's fees.

DATED: Honolulu, Hawaii, \_\_\_\_\_

DEPARTMENT OF HEALTH  
STATE OF HAWAII

By: \_\_\_\_\_  
KEITH E. KAWAOKA, D.ENV.  
Deputy Director for Environmental Health

DATED: Honolulu, Hawaii, \_\_\_\_\_

GW CONSTRUCTION

By: \_\_\_\_\_  
GERALD YAMADA  
President

APPROVED AS TO FORM:

  
\_\_\_\_\_  
WILLIAM F. COOPER  
Deputy Attorney General