

**UPCOUNTRY MAUI AGRICULTURAL PARK
WATER DELIVERY AGREEMENT**

Dated: September 14, 2018

UPCOUNTRY MAUI AGRICULTURAL PARK (262 ACRES)

- The agreement provides for non-potable water for the land the County is proposing to acquire from Alexander & Baldwin, LLC.
- The County agrees to relocate the two existing County pumps to more efficiently use water from the ditch, subject to release of funding from the State.
- The County may draw 1.0 million gallons per day of non-potable water to serve the proposed acquisition lands.
- The County shall pay to A&B the sum of six cents per thousand gallons.
- The agreement takes effect upon the close of the County's purchase of the 262 acres. It is initially a one-year term, with automatic renewal every year, subject to EMI's continued receipt of permits or receipt of a lease from the State Board of Land and Natural Resources.

EXISTING KULA AGRICULTURAL PARK

- The County currently may draw up to 1.5 million gallons per day of water from the Hamakua Ditch via the two existing County pumps.

RECEIVED AT PEA MEETING ON 9/17/18

UPCOUNTRY MAUI AGRICULTURAL PARK WATER DELIVERY AGREEMENT

THIS UPCOUNTRY MAUI AGRICULTURAL PARK WATER DELIVERY AGREEMENT ("Agreement") is made on September 14, 2018, by and between ALEXANDER & BALDWIN, LLC, a Delaware limited liability company, whose mailing address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter referred to as "A&B", and the COUNTY OF MAUI, for its Department of Water Supply, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as the "County".

Background of this Agreement

A. The County and A&B contemplate entering into a Real Property Purchase and Sale Agreement (the "Purchase Contract") pursuant to which the County will acquire approximately 262 acres of land for purposes of establishing the initial increment ("Increment 1") of a new County agricultural park (the "Upcountry Maui Agricultural Park"), such parcel being identified as Tax Map Key No. (2) 2-5-001:002.

B. A&B and its subsidiary, East Maui Irrigation Company, LLC ("EMI"), own and operate a system for the collection and transmission of surface water via the Wailoa and Hamakua Ditches (the "Ditch System").

C. The Ditch System delivers non-potable water to Reservoir 40, which is located on an A&B-owned parcel near the County's existing Kula Agricultural Park ("Existing Agricultural Park") and Increment 1, such parcel being identified as Tax Map Key No. (2) 2-5-002:001.

D. Pursuant to an existing agreement between EMI, A&B and the County ("Existing Agreement"), the County currently may draw up to 1.5 million gallons per day ("MGD") of water from the Ditch System by way of two (2) County pumps located on the Hamakua Ditch (collectively, the "Ag Park Pump") above the inlet to Reservoir 40 to provide non-potable water for certain agricultural uses.

E. In its June 2018 Interim Instream Flow Standard (IIFS) decision for East Maui streams, the State Commission on Water Resource Management ("CWRM") ordered significant reductions in the offstream diversions that source the Ditch System, and also urged improvements in water delivery systems to minimize leakage and waste.

F. At present, in order for the County to operate the Ag Park Pump, EMI must send an additional 1.0 MGD of water down the Hamakua Ditch above the 1.5 MGD that the County may withdraw. In light of the recent IIFS decision, and consistent with CWRM's directives, it would be prudent to improve the infrastructure to more efficiently use water from the Ditch System. Specifically, relocating the Ag Park Pump to the outlet of Reservoir 40 is expected to result in water savings of at least 1.0 MGD of water, which savings A&B believes is sufficient to meet the anticipated water needs of Increment 1.

G. Accordingly, A&B and the County want to document certain agreements regarding the Ditch System, Reservoir 40, and the delivery of water to Increment 1 of the Upcountry Maui Agricultural Park, all as set forth in this Agreement.

NOW, THEREFORE, A&B and the County hereby agree as follows:

1. Relocation of the Ag Park Pump to Reservoir 40. The County agrees to relocate the Ag Park Pump to a mutually-agreeable location at Reservoir 40 (the "Pump Improvements"). The County shall complete the Pump Improvements as soon as reasonably practicable following the close of the County's purchase of Increment 1, subject to release of funding from the State of Hawaii. In the event that the Pump Improvements are not completed for any reason, the County understands that only approximately 119 acres out of the total 262 acres can be irrigated directly from Reservoir 40 via gravity feed.

2. Delivery of Ditch System Water for Increment 1. A&B agrees that the County may draw from Reservoir 40 1.0 MGD of non-potable water to serve Increment 1. This 1.0 MGD is in addition to the 1.5 MGD that the County may draw under the Existing Agreement. Meters or other means to measure the County's withdrawals from Reservoir 40 shall be installed by the County at the points of withdrawal. Subject to Section 9 (Force Majeure), it shall be the responsibility of A&B to assure sufficient ditch flow to accommodate the non-potable water needs of Increment 1, in the amount stated herein, in a manner that will not diminish the County's maximum allowable withdrawals from the Wailoa Ditch for the County's Kamole Weir Water Treatment Facility and from the Hamakua Ditch for the Existing Agricultural Park pursuant to the terms of the Existing Agreement and that will abide by CWRM's IIFS decisions.

3. Water Delivery Charges. The County shall pay to A&B the sum of six cents per thousand gallons delivered by A&B to the County under this Agreement. No other fees or charges shall apply to the delivery of this water. It is understood that to change the rate, the parties will execute an amendment to this Agreement.

4. Maintenance. Subject to Section 9 (Force Majeure), A&B agrees to maintain, until such time that each are conveyed to the County, if any, Reservoir 40, A&B's existing storage cistern, the transmission ditch at the upper edge of Increment 1, the transmission ditch between Reservoir 40 and Increment 1, A&B's existing pump near the Ag Park Pump, and the 10" supply line between A&B's pump and Increment 1, provided that this commitment does not include making upgrades or improvements to such facilities relating to the County's development or use of Increment 1.

5. Term. This Agreement shall take effect upon the close of the County's purchase of Increment 1 and shall have a one-year term that shall automatically renew every year subject to EMI's continued receipt of permits or receipt of a lease from the State Board of Land and Natural Resources ("BLNR") to collect surface water sources that feed the Ditch System. If the BLNR grants EMI a long-term lease, this Agreement may be terminated on no less than twelve (12) months prior notice and during that period the parties shall negotiate in good faith for a long-term replacement of this Agreement to be executed concurrently with the effective date of

the termination of this Agreement.

6. Right of Entry. A&B hereby grants the County, its employees, agents, consultants and contractors a right-of-entry onto the premises designated as Tax Map Key Nos. (2) 2-5-001:002 and (2) 2-5-002:001 for the following purposes: a) surveying, planning, design, construction, and access to perform any work necessary to complete the Pump Improvements; b) until such time that easements are granted to the County pursuant to Paragraph 7 below, access to the Ditch System and Reservoir 40, including the right to maintain, operate, repair, and replace the Pump Improvements, associated pipelines, and related equipment and appurtenances necessary or expedient for the proper maintenance, operation, or repair of the Pump Improvements and associated pipelines; and c) access to and use of A&B's existing storage cistern, the transmission ditch at the upper edge of Increment 1, the transmission ditch between Reservoir 40 and Increment 1, A&B's existing pump near the Ag Park Pump, and the 10" supply line between A&B's pump and Increment 1. The County shall indemnify and hold A&B harmless from and against all claims for property damage, personal injury, or wrongful death arising out of or in connection with this right of entry, to the extent that the County's liability for such damage, loss or injury has been determined by a court of competent jurisdiction or otherwise agreed to by the County, and further, to the extent the payment for such damage, loss or injury is permitted by law and approved by the Maui County Council.

7. Easements. Upon completion of the Pump Improvements and any other improvements on A&B's lands, the County shall have a licensed surveyor prepare easement maps for such improvements and for its access and operational purposes. At such time, A&B and the County shall execute and record such easements over A&B's lands as are necessary for the improvements, access and operational purposes and for the County to transport water from Reservoir 40 to the Existing Agricultural Park, the other properties, and Increment 1 for no consideration.

8. Agreement Limited to Increment 1. The additional 1.0 MGD of water delivered under this Agreement is for use only at Increment 1. Supply of irrigation water to future increments of the Upcountry Maui Agricultural Park is subject to further agreement between the parties. Except with respect to the relocation of the Ag Park Pump, this Agreement does not affect the terms and conditions of water delivery under the Existing Agreement.

9. Conditions on Commitments; Force Majeure. The commitments in this Agreement shall be subject to (a) such standards, limitations and conditions that the CWRM or the BLNR impose from time to time in connection with interim instream flow standards and the state water permits/lease for the East Maui streams, and (b) other actions, orders and decisions of CWRM, BLNR and other government agencies, the orders and judgments of courts of competent jurisdiction, and to all other conditions and events including droughts, as declared by the Director of the County Department of Water Supply, and natural disasters beyond the control of the parties.

10. Governing Law. This Agreement shall be governed by the laws of the State of Hawaii.

11. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

12. Assignees and Successors. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

13. Amendments. This Agreement may not be amended unless mutually agreed to in writing and signed by the parties hereto.

14. Default. If party fails cure a default on its obligations under this Agreement within thirty days of notice of such default, the non-defaulting party may pursue any remedies available to it at law or in equity. The prevailing party in any action arising from or relating to this Agreement shall be entitled to an award of its reasonable attorneys' fees and costs.

15. No Third-Party Beneficiary. Except as may be expressly set forth herein, no third-party beneficiaries are intended to be created by this Agreement or by any of the terms hereof. No person or entity other than A&B or the County, their successors or assigns, shall be entitled to claim any rights under, or to enforce any of the provisions hereof.

16. Capacity. Pursuant to Section 18-215 of the Delaware Limited Liability Company Act, A&B established within itself Series T, to which its rights and obligations with respect to the Memorandum have been allocated. A&B enters into this Amendment on behalf of said Series T.

17. Counterparts. This Agreement may be executed in counterparts, and said execution shall have the same effect as if all parties executed the same original copy hereof.

[Rest of page left intentionally blank; signature pages follow.]

IN WITNESS WHEREOF, A&B and the County have executed this instrument the day and year first above written.

ALEXANDER & BALDWIN, LLC

By: 

CHRISTOPHER J. BENJAMIN
President & Chief Executive Officer, Series T

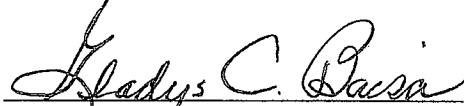
By: 

CHARLES W. LOOMIS
Assistant Secretary, Series T

COUNTY OF MAUI

By: 
ALAN M. ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


GLADYS C. BAISA
Director
Department of Water Supply

REVIEWED AS TO FORM AND
LEGALITY:

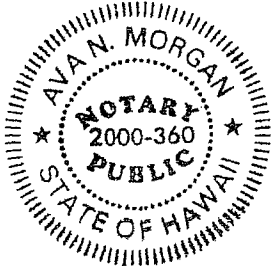

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

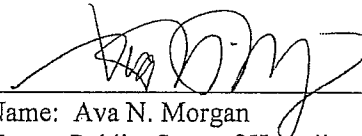
CITY AND COUNTY OF HONOLULU

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) SS:
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On this 14th day of September, 2018, before me personally appeared CHRISTOPHER J. BENJAMIN, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)


Name: Ava N. Morgan
Notary Public, State of Hawaii

My commission expires: 07/23/2020

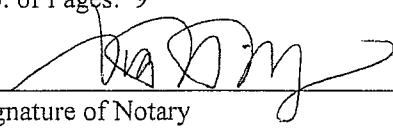
NOTARY CERTIFICATION STATEMENT

Document Identification or Description: UPCOUNTRY MAUI
AGRICULTURAL PARK WATER DELIVERY AGREEMENT

Doc. Date: September 14, 2018 or ☐ Undated at time of notarization

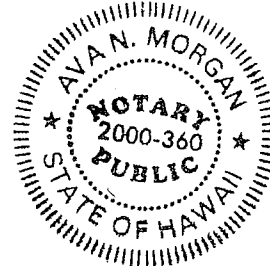
No. of Pages: 9

Jurisdiction: First Circuit
(in which notarial act is performed)


Signature of Notary

09/14/2018
Date of Notarization and
Certification Statement

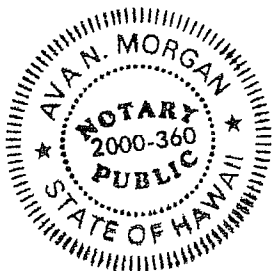
Ava N. Morgan
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 14th day of September, 2018, before me personally appeared CHARLES W. LOOMIS, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and in the capacity shown, having been duly authorized to execute such instrument in such capacity.



(Official Stamp or Seal)

A handwritten signature of Ava N. Morgan in black ink.

Name: Ava N. Morgan
Notary Public, State of Hawaii

My commission expires: 07/23/2020

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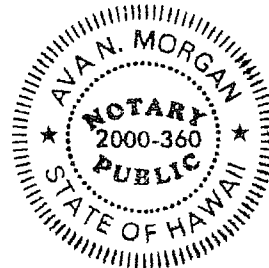
A handwritten signature of Ava N. Morgan in black ink.

Signature of Notary

09/14/2018

Date of Notarization and
Certification Statement

Ava N. Morgan
Printed Name of Notary



(Official Stamp or Seal)