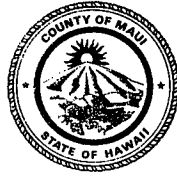


ALAN M. ARAKAWA
MAYOR



JEFFREY A. MURRAY
FIRE CHIEF

LIONEL W. MONTALVO
DEPUTY FIRE CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE & PUBLIC SAFETY

200 DAIRY ROAD
KAHULUI, HI 96732
(808) 270-7561
Fax (808) 270-7919
Email: fire.dept@mauicounty.gov

September 29, 2017

2017 OCT -2 PM 3:11
OFFICE OF THE
COUNTY COUNCIL

RECEIVED

Ms. Lynn A.S. Araki-Regan
Budget Director, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Honorable Alan M. Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa 10/2/17
Mayor Date

For Transmittal to:

Honorable Riki Hokama
Chair, Budget and Finance Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Hokama:

SUBJECT: MAKENA LIFEGUARD SERVICES (BF-83)

In reply to your letter dated September 21, 2017, we have prepared a response that hopefully answers your questions and concerns regarding the Makena lifeguard services.

1. How many ocean safety officer positions are currently assigned to Makena Beach Park and are all positions funded through grants? If not, provide the title for each non-grant position and the associated salary paid using County funds.

There are 10.5 Ocean Safety Officer positions assigned to Makena State Park and all position salaries are funded by a grant from State Parks since 2008 (attachment #1).

2. Since the Memorandum of Agreement for Lifeguard Services ("MOA") at Makena Beach State Recreation Area between the County of Maui and the Department of Land and Natural Resources expired on June 30, 2017, please confirm whether the County has

continued to provide lifeguard services for Fiscal Year 2018. If lifeguard services are ongoing at Makena Beach, please explain under what authority this is being done, whether the County has been indemnified against loss by the State, any other terms under which the County is providing services, and the amount and frequency under which the County has been reimbursed for these services.

The County of Maui, via the Department of Fire and Public Safety Ocean Safety Bureau, has continued to provide lifeguard services at Makena Beach State Recreation Area since July 01, 2017 even though the MOA expired on June 30, 2017 (attachment # 2). On June 06, 2017, Ocean Safety Maui inquired with State Parks Administrator, Curt Cottrell, on the status of a revised MOA which was historically simply renewed every year by all counties to remain status quo. However, the MOA specifically mentioned Act 170, which all county ocean safety divisions knew would be altered or deleted. All four Hawaii counties and their respective mayors and county councils supported and lobbied to extend Act 170 for an additional five years as proposed by the State Senate under SB562. Ultimately the severely watered down State House version was vetoed by Governor Ige and Act 170 did sunset on June 30, 2017 (attachment #3).

The MOA stated:

In accordance with Act 170, Session Laws of Hawaii 2002, as amended by Act 152, Session Laws of Hawaii 2007, "a county lifeguard, the employing county, and the State shall not be liable for any civil damages resulting from any act or omission of the lifeguard while providing rescue, resuscitative, or other lifeguard services on the beach or in the ocean in the scope of employment as a county lifeguard. This exception from liability, however, shall not apply when the claim for civil damages results from a county lifeguard's gross negligence or wanton act or omission."

While the State legislature was still in session, mayors of each county were threatening to pull county lifeguards from state parks currently covered by an MOA. A later press release by all county mayors took a more collaborative stance to work with State Parks and keep county lifeguards pending amendments to existing individual county MOA's. There was communication between State Parks Administrator Curt Cottrell to get a revised MOA in place but the process could not be completed by June 30, 2017. Mr. Cottrell asked each county to bear with him and continue services until such MOA could be agreed upon and signed (attachment #4).

Proposed base salaries and fringe benefits were submitted to State Parks, raising Maui County's Makena grant funding from \$606,469 to \$1,056,059 for FY '18, an increase of \$449,590 (attachment #1). A letter of intent signed by DLNR Chair Suzanne Case to continue to pay for lifeguard services at Makena, beginning July 01, 2017, was received on August 17, 2017 (attachment #5).

If lifeguards are "pulled" from Makena State Park, Maui Fire Department firefighters will ultimately respond to any and all 911 calls for help. With the Makena lifeguards in place, lifeguards can respond immediately from Makena verses the closest fire station. The Wailea fire fighters will

Honorable Alan M. Arakawa
For Transmittal to:
Honorable Riki Hokama
September 29, 2017
Page 3

take around 19 minutes to reach Makena, delaying emergency rescue response (attachment #6). Besides rescues, lifeguards perform hundreds of preventive actions on a daily basis via public contact, PA announcements, and posting additional warning signs as outlined by Act 190 (attachment #7), another important legislation that has kept litigation at bay.

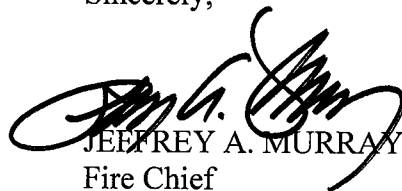
Based on the figures submitted by MFD, the County of Maui will be reimbursed \$264,015 on a quarterly basis after service has been performed and the MOA is agreed upon and signed by all parties. However, we have not received payment yet for the period July 1st-September 30th, 2017. Enclosed are numerous emails and documents which support the content of this response letter.

3. Provide a breakdown of all expenditures related to the lifeguard services at Makena Beach Park for the period July 1, 2017 through September 30, 2017. If funds were expended for salaries and wages, provide a breakdown by the pay period, by salary and wages, and by fringe benefit costs. Further, provide the index codes used for the expenditures.

See enclosed expenditures for Makena lifeguard services from July 01, 2017 to Sept 15, 2017 (attachment #8). Expenditures till Sept. 30, 2017 are not yet available. Fringe is calculated at 82.81%. Index code of 186820 was assigned to Makena grant.

If you have any questions or require additional information, please feel free to contact me. We look forward to working with the Council on these important issues.

Sincerely,


JEFFREY A. MURRAY
Fire Chief

Attachments

xc: Valeriano Martin, Assistant Fire Chief of Support Services (pdf w/att.)
Collin Yamamoto, Battalion Chief of Ocean Safety (pdf w/att.)

Colin Yamamoto - RE: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual slary costs for each County

From: Colin Yamamoto
To: Piikea Tomczyk
Date: 8/7/2017 7:14 AM
Subject: RE: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual slary costs for each County
Attachments: OS Makena Base Salaries as of 8.4.17.docx; OS 2016 Fringe Benefit.pdf.

Good Morning Piikea,

Attached is base salaries for lifeguards at Makena. I also attached a document to show what fringe benefits cost the County of Maui. Sorry you did not have this information available this past weekend. Let me know if you have any questions.

Thank you,

Colin Yamamoto
Battalion Chief, Ocean Safety
County of Maui, Dept. of Fire & Public Safety
21 Kinipopo St., Wailuku, HI 96793
Office 808-463-3850; Cell 808-357-3023;
>>> "Tomczyk, Piikea" <piikea.tomczyk@hawaii.gov> 8/6/2017 9:08 AM >>>

Hi Colin,

Thanks for letting me know. This was a work weekend to finish "projects" such as this – otherwise weekend was good. Hope your was as well.

I will be in a meeting on Monday morning, back after lunch and it would be great if you could send it by them so I can work on it.

Mahalo!

Piikea Tomczyk
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl Street, #310
Honolulu, HI 96813

tel: (808) 587-0304
fax: (808) 587-0311
email: piikea.tomczyk@hawaii.gov

ATTACHMENT 1

From: Colin Yamamoto [mailto:Colin.Yamamoto@co.maui.hi.us]

Sent: Friday, August 04, 2017 4:33 PM

To: Tomczyk, Piikea

Subject: RE: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual slary costs for each County

Aloha Piikea,

I completed the base salary and fringe cost for lifeguards at Makena as requested; however, Chief Murray has not had time to review it for approval. I would say this should be done by Monday. My apology for the delay. I will send to you as soon it gets approval. I tried calling your office but did not leave a message. Have a nice weekend or should I say hope you had a nice weekend should you read this Monday morning.

Thank you,
Colin

>>> Colin Yamamoto 8/2/2017 7:38 AM >>>
Good Morning Piikea,

I'll need a couple days to work on this as I had other things due this past Monday. You will be shocked at what the fringe cost is which each county has been absorbing. Thank you for your patience.

Aloha,
Colin

>>> "Tomczyk, Piikea" <piikea.tomczyk@hawaii.gov> 8/1/2017 6:02 PM >>>

Hi Colin,

I am trying to finish up the lifeguard contracts to cover FY18 Q1. If you could, can you please provide me with the base cost and fringe cost for a lifeguard?

Hoping to get them all completed by Friday.

Mahalo,

Piikea Tomczyk
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl Street, #310
Honolulu, HI 96813

tel: (808) 587-0304
fax: (808) 587-0311
email: piikea.tomczyk@hawaii.gov

From: Colin Yamamoto [<mailto:Colin.Yamamoto@co.maui.hi.us>]

Sent: Tuesday, July 25, 2017 4:30 PM

To: Cottrell, Curt A

Cc: Carpenter, Alan B; Kaluhiwa, Kekoa W; Tomczyk, Piikea; Case, Suzanne D; melanio.lorenzo@hawaiiicounty.gov; jhowe@honolulu.gov; dvierra@kauai.gov; kvaughan@kauai.gov; rwesterman@kauai.gov

Subject: Re: Lifeguard Contracts and Letters to extend the current MOA's - need the total annual salary costs for each County

Aloha Curt,

Sorry for the delayed response. Chief Jeff Murray has read Chief Westerman's response and wanted me to let you know he has been in contact with Mayor Arakawa regarding your proposal and other potential options. Information you requested will be forthcoming. We look forward to collaborating with DSP at a predetermined meeting to provide needed lifeguard services at selected state parks.

Thank you,

Colin Yamamoto

Battalion Chief, Ocean Safety

County of Maui, Dept. of Fire & Public Safety

21 Kinipopo St., Wailuku, HI 96793

Office 808-463-3850; Cell 808-357-3023;

>>> "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov> 7/18/2017 12:31 PM >>>

Aloha Statewide County Lifeguard Contacts - I apologize in advance if the email contacts I have sent this too are inappropriate for this request, please forward as is warranted. DSP also apologizes for the delay. We have been meeting with our DSP District Supervisors and calculating our FY18 operating and salary budget as approved by the Governor and the Legislature.

As an FYI: Up to this point, funding the four lifeguard contracts represents approximately 15% of the DSP total statewide operational budget.

With the confirmation that the four counties are still interested in the contractual relationship associated with providing the critical lifeguard services at our 4 State Park beaches – I am revising the four amendment letters to extend the terms current MOA for another limited term – hoping to craft a new master MOA.

1. Due to the elimination of the immunity – the letters will include that element of the MOA is now extinguished.
2. In addition, DSP is interested in now **providing the cost elements of only the lifeguard salaries**, including the 16% pay increase from last year – but not additional funds for equipment. However, the letters will reflect that DSP is open to cost sharing of equipment or tower repair based on actual cost and available funding.
3. The letters extending the terms of the MOA's will now include that all equipment thus far purchased by the Counties pursuant to the previous MOA and letter extensions belongs the County – as it is strictly water safety based in its application. **As such – please send me only the annual and quarterly breakdown of salary cost to staff your respective towers.** This figure will be added to the current letters to amend the respective MOA. However, if this commitment to only fund lifeguard staff salaries is a significant impediment – please contact me directly.

4. Due to the elimination of the immunity and the recognition of the need to continue this relationship - we would like that all four counties and DSP collaboratively review the enabling MOA's - ***and if it is not too daunting***, craft a new master MOA that includes all four Counties at one time. I know that the Counties are set up differently in terms of the policy and management entities for the water safety personnel - but as a statewide collaborative effort I would like to see if a master MOA Statewide is tenable. If not, then four separate - but virtually identical in language and expectation and term - is what DSP would prefer to finalize. One statewide meeting of all of us to finalize may be warranted.

DSP deeply appreciates the Counties willingness to continue this successful relationship in lieu of the damage inflicted in the past Legislation Session, and looks forward to finalizing these letters a.s.a.p. to provide assurance that payment is locked in and the continuity of lifeguard services at these four heavily visited State Park beaches is secure.

Mahalo ...



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0269 phone
(808) 587-0311 fax

Base Cost for Makena Lifeguard Service as of Aug 2017

Salary figures are derived from HGEA BU 14 CBA effective July 01, 2016 and ending on June 30, 2017. Currently, BU14 is in arbitration negotiating a new contract effective July 01, 2017 which will more than likely increase salaries by at least 2%.

Per MOA expired June 30, 2017 Makena State Park was allocated 10.5 positions. Maui County under Parks and Recreation and effective July 01, 2016 under Department of Fire and Public Safety, used funding to operate two lifeguard towers and a rescue water craft. The following are the positions, title, and annual salaries for these positions:

SR 21 G	OSO IV Captain	\$65,700
SR 19 F	OSO III Lieutenant	\$58,416
SR 17H	OSO II	\$58,416
SR 17G	OSO II	\$56,172
SR 17F	OSO II	\$54,000
SR 17F	OSO II	\$54,000
SR 17F	OSO II	\$54,000
SR 17E	OSO II	\$51,972
SR 17E	OSO II	\$51,972
SR 17D*	OSO II	\$49,994 (24,997) half time position
SR 17C	OSO II	<u>\$48,036</u>

Total \$577,681 without fringe

Total \$1,056,059 with fringe

Fringe benefits are calculated at 82.81% (see attached). Per payroll supervisor ERS is 18% instead of 17% bringing the base annual salaries for Makena lifeguard services at \$1,056,059. The County of Maui in FY-17 was awarded via MOA with State Parks \$606,469. This does not take into account \$3.50/hour differential pay for operators of rescue water crafts, OT, equipment, uniforms, repairs/maintenance, gas, utilities, and office supplies. As you can see Maui County (and Hawaii County, C&C Honolulu, Kauai County) have been absorbing shortfalls from the State Parks grant. Nevertheless, Maui County is willing to work and collaborate with State Parks for the benefit and safety of the general public utilizing Makena State Park.

Thank you,

Colin Yamamoto
Department of Fire and Public Safety
Battalion Chief, Ocean Safety

ALAN M. ARAKAWA
Mayor



DANILO F. AGSALOG
Director

MARK R. WALKER
Deputy Director

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

October 5, 2015

MEMORANDUM

TO: ALL DEPARTMENTS AND AGENCIES

SUBJECT: EMPLOYEE FRINGE BENEFIT RATES-
CALENDAR YEAR 2016

The County of Maui has reviewed and revised the employee fringe benefit rates utilizing the actual cost data and salary base for the prior fiscal year which ended on June 30, 2015 (Fiscal 2015). These rates are to be used from January 1, 2016 through December 31, 2016 (Calendar 2016). Please note that there are no anticipated changes for July 1, 2016 as in previous years.

<u>EMPLOYEE FRINGE BENEFIT RATES BASED UPON EMPLOYER'S CONTRIBUTION</u>	<u>Personnel (except Police & Fire)</u>	<u>Police & Fire</u>
	<u>1/1/16</u>	<u>1/1/16</u>
Employee's Retirement System (ERS)	17.00%	25.00%
Social Security/Medicare	7.65	1.45
Subtotal	24.65%	26.45%
Unemployment	8.13%	8.13%
Workers' Compensation (a)	3.26	6.21
Rate	11.34%	14.34%
Medical, Drug, Dental, Vision, Life	17.27%	17.27%
Other Post Employment Benefits (OPEB)	9.65%	9.65%
Total Employer's Contribution	62.96%	67.71%
<u>LEAVE BENEFITS</u>		
Vacation	8.08%	8.08%
Sick	5.00	5.00
Holiday	5.00	5.00
Others (Admin Leave, Union)	.77	.77
Total Leave Benefits	18.85%	18.85%
Total Fringe Benefit Rate (OT & Straight Time)	81.81%	86.56%

(a) Please use the following Workers' Compensation rates for the following classifications: Refuse workers: 12.26%; Firefighters 6.21%; Police Officers: 4.00%; Not Otherwise Classified: 3.26%

If you have any questions on the above employee fringe benefit rates, please call the Accounts Division.

A handwritten signature in black ink, appearing to read "Danilo F. Agsalog".

DANILO F. AGSALOG
Director of Finance

Colin Yamamoto - Fwd: RE: Lifeguard Contracts and MOA

From: Colin Yamamoto
To: Kagoshima, Cindy
Date: 7/14/2017 9:57 AM
Subject: Fwd: RE: Lifeguard Contracts and MOA

Hi Cindy,

I hope this is adequate documentation that statewide all counties are waiting for a revised MOA from State Parks. I cut and pasted a portion of Curt Cottrell email below which states:

Then DSP and the Counties roll up our sleeves and examine the current cost elements associated with the 16% collective bargaining pay increase for the Lifeguards from last year that is not addressed in the current contracts, and DSP will then build its operating budget for the upcoming FY based upon the increased costs associated with securing this important water safety staffing the those 4 beach parks.

There will be a lapse between MOA and contract renewal and the expiration date of the 4 contracts – so **collectively** we need to work through this with a temporary solution in order to not have a lapse in service while the retooling of the legal and fiscal relationship occurs.

As you can see, Curt does mention the 16% pay increases and there will be a lapse without a contract MOA until they can draft one up. They have been slammed dealing with the Act 170 issue too.

Thank you, Colin

>>> "Cottrell, Curt A" curt.a.cottrell@hawaii.gov 6/7/2017 12:30 PM >>

Thanks Colin: This is the type of revision that we need to work on comprehensively with all of the County Lifeguards for the updated agreement so there is consistency.

In regards to what constitutes adequate skill sets for performance of duty - DSP would defer to the water safety experts such as yourself as to what the minimal requirement should be to perform the duty



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0269 phone
(808) 587-0311 fax

ATTACHMENT 2

From: Colin Yamamoto [mailto:Colin.Yamamoto@co.maui.hi.us]
Sent: Wednesday, June 07, 2017 11:13 AM

To: Cottrell, Curt A; jhowe@honolulu.gov
Cc: Carpenter, Alan B; Kaluhiwa, Kekoa W; Tomczyk, Piikea; Case, Suzanne D
Subject: Re: Lifeguard Contracts and MOA

Aloha Curt,

Thank you for your prompt response and plan moving forward. I will forward to Chief Murray and mayor office and await responses from Kauai and Hawaii County. We do not want a lapse in service and collectively agree to work together until a revised MOU is drafted for approval at each respective county.

Yes, the MOA needs amending on the Act 170 provision as stated in 2. Scope of Services. May I also recommend edits to section on "Performance requirements." USLA only requires a measured 500 meter swim and does not specify pool or ocean swim. Current MOA language states pool swim which would be logistically difficult for Oahu to comply with per Kevin Allen, Operations Manager for C&C. Oahu does an ocean measured 500 meter swim. Lastly, may I recommend adding to the performance requirement a 100 yard beach run, followed by a 100 yard ocean swim, followed by a 100 yard beach run in under three minutes. This would be consistent with all counties in Hawaii which are currently meeting this standard for other than state beaches contracted with DSP.

Thank you,

Colin Yamamoto
 Battalion Chief, Ocean Safety
 County of Maui, Dept. of Fire & Public Safety
 21 Kinipopo St., Wailuku, HI 96793
 Office 808-463-3850; Cell 808-357-3023;
 >>> "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov> 6/7/2017 8:38 AM >>>

Aloha Colin: Mahalo for the confirmation of services and the inquiry.

I have copied Jim Howe, and am asking Jim as our prime DSP contact on this subject to forward this email to the respective counterparts on Kauai and Hawaii island and then copy me so DSP can communicate directly and efficiently to the four Counties on this subject.

There is a master MOA that was consummated years ago between DLNR/DSP and the Counties to establish the parameters for the fiscal and management relationship, then effectuated via the 4 individual and annual contracts for the lifeguard service at the 4 State Park beaches across the state identified years ago as needing water safety personnel. These contracts are renewed annually and are reviewed by the AG.

DLNR and the AG will be meeting with the Governor early month to explain the current legislation that replaces the previous immunity for the Lifeguards. It is my understanding that approval will be recommended, but this approval is subject to confirmation that the Counties are still committed to the contractual relationship, absent that - there is no need to approve the legislation.

Jim has indicated this is the case, and Colin via your email I have confirmation from Maui. It would be helpful, prior to the meeting with the Governor, to obtain this confirmation for Kauai and Hawaii island so that there is certainty moving forward. I have heard this informally.

It is my understanding the legislation is not optimal for the State based on my discussion with the AG, so there will be a need, with substantive guidance from the AG and likely the respective Corporate Counsels – to now amend the MOA to resolve the lingering legal issue that was not addressed directly by the legislation. The MOA provides an opportunity to do so. This relationship was crafted with the immunity provision in place – so we are in a whole new ball game.

Then DSP and the Counties roll up our sleeves and examine the current cost elements associated with the 16% collective bargaining pay increase for the Lifeguards from last year that is not addressed in the current contracts, and DSP will then build its operating budget for the upcoming FY based upon the increased costs associated with securing this important water safety staffing the those 4 beach parks.

There will be a lapse between MOA and contract renewal and the expiration date of the 4 contracts – so **collectively** we need to work through this with a temporary solution in order to not have a lapse in service while the retooling of the legal and fiscal relationship occurs.



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0289 phone
(808) 587-0311 fax

From: Colin Yamamoto [<mailto:Colin.Yamamoto@co.maui.hi.us>]
Sent: Tuesday, June 06, 2017 6:52 PM
To: Cottrell, Curt A
Subject: FY 2018 Makena MOA

Aloha Curt,

We had a meeting today in council chambers and corporation counsel asked if I received the FY 2018 MOA for Makena. I replied no and was advised Maui County needed a revised MOA to continue lifeguard services at Makena beginning July 01, 2017. Mayor Arakawa has indicated there are no plans to pull lifeguards from Makena and wants to continue providing the service even after state legislative actions involving Act 170. Any idea when the revised FY18 MOA for Makena will be forwarded to Maui County?

Thank you,

Colin Yamamoto
Battalion Chief, Ocean Safety
County of Maui, Dept. of Fire & Public Safety
21 Kinipopo St., Wailuku, HI 96793
Office 808-463-3850; Cell 808-357-3023;

Colin Yamamoto - RE: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual salary costs for each County

From: "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov>
To: Colin Yamamoto <Colin.Yamamoto@co.maui.hi.us>, "Tomczyk, Piikea" <piikea...
Date: 7/26/2017 2:35 PM
Subject: RE: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual salary costs for each County
CC: "Carpenter, Alan B" <alan.b.carpenter@hawaii.gov>, "Kaluhiwa, Kekoa W" <...

Mahalo Colin – we are putting together the 4 contracts and as soon as we are pau shoot them back out for review.



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0289 phone
(808) 587-0311 fax

ATTACHMENT 3

From: Colin Yamamoto [mailto:Colin.Yamamoto@co.maui.hi.us]
Sent: Tuesday, July 25, 2017 4:30 PM
To: Cottrell, Curt A
Cc: Carpenter, Alan B; Kaluhiwa, Kekoa W; Tomczyk, Piikea; Case, Suzanne D; melanio.lorenzo@hawaiicounty.gov; jhowe@honolulu.gov; dvierra@kauai.gov; kvaughan@kauai.gov; rwesterman@kauai.gov
Subject: Re: Lifeguard Contracts and Letters to extend the current MOA"s - need the total annual salary costs for each County

Aloha Curt,

Sorry for the delayed response. Chief Jeff Murray has read Chief Westerman's response and wanted me to let you know he has been in contact with Mayor Arakawa regarding your proposal and other potential options. Information you requested will be forthcoming. We look forward to collaborating with DSP at a predetermined meeting to provide needed lifeguard services at selected state parks.

Thank you,

Colin Yamamoto
 Battalion Chief, Ocean Safety
 County of Maui, Dept. of Fire & Public Safety
 21 Kinipopo St., Wailuku, HI 96793
 Office 808-463-3850; Cell 808-357-3023;

>>> "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov> 7/18/2017 12:31 PM >>>

Aloha Statewide County Lifeguard Contacts - I apologize in advance if the email contacts I have sent this too are inappropriate for this request, please forward as is warranted. DSP also apologizes for the delay. We have been meeting with our DSP District Supervisors and calculating our FY18 operating and salary budget as approved by the Governor and the Legislature.

As an FYI: Up to this point, funding the four lifeguard contracts represents approximately 15% of the DSP total statewide operational budget.

With the confirmation that the four counties are still interested in the contractual relationship associated with providing the critical lifeguard services at our 4 State Park beaches – I am revising the four amendment letters to extend the terms current MOA for another limited term – hoping to craft a new master MOA.

1. Due to the elimination of the immunity – the letters will include that element of the MOA is now extinguished.
2. In addition, DSP is interested in now **providing the cost elements of only the lifeguard salaries**, including the 16% pay increase from last year – but not additional funds for equipment. However, the letters will reflect that DSP is open to cost sharing of equipment or tower repair based on actual cost and available funding.
3. The letters extending the terms of the MOA's will now include that all equipment thus far purchased by the Counties pursuant to the previous MOA and letter extensions belongs the County – as it is strictly water safety based in its application. **As such – please send me only the annual and quarterly breakdown of salary cost to staff your respective towers.** This figure will be added to the current letters to amend the respective MOA. However, if this commitment to only fund lifeguard staff salaries is a significant impediment – please contact me directly.
4. Due to the elimination of the immunity and the recognition of the need to continue this relationship - we would like that all four counties and DSP collaboratively review the enabling MOA's - ***and if it is not too daunting***, craft a new master MOA that includes all four Counties at one time. I know that the Counties are set up differently in terms of the policy and management entities for the water safety personnel – but as a statewide collaborative effort I would like to see if a master MOA Statewide is tenable. If not, then four separate – but virtually identical in language and expectation and term - is what DSP would prefer to finalize. One statewide meeting of all of us to finalize may be warranted.

DSP deeply appreciates the Counties willingness to continue this successful relationship in lieu of the damage inflicted in the past Legislation Session, and looks forward to finalizing these letters a.s.a.p. to provide assurance that payment is locked in and the continuity of lifeguard services at these four heavily visited State Park beaches is secure.

Mahalo ...



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0269 phone

(808) 587-0311 fax

Colin Yamamoto - RE: Letter of Intent

From: "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov>
To: Colin Yamamoto <Colin.Yamamoto@co.maui.hi.us>, "Tomczyk, Piikea" <piikea...
Date: 8/15/2017 1:26 PM
Subject: RE: Letter of Intent
CC: Cindy Kagoshima <Cindy.Kagoshima@co.maui.hi.us>, Marci Sato <Marci.Sato@...

DSP will be sending out a salary chart today that is intended to be used as a baseline for the MOA's. Once the four counties concur the MOA's will be circulated.



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0289 phone
(808) 587-0311 fax

From: Colin Yamamoto [mailto:Colin.Yamamoto@co.maui.hi.us]
Sent: Tuesday, August 15, 2017 1:23 PM
To: Cottrell, Curt A
Cc: Cindy Kagoshima; Marci Sato; Ortaeine Acidera; Tomczyk, Piikea
Subject: Letter of Intent

Aloha Curt,

I know you are currently working on a new MOA for all counties outlining new changes from past MOA's. Maui is having some issues with corporation counsel, payroll, and grants knowing a current MOA is still pending and Maui continues to staff and pay lifeguards at Makena. Can you please send me a "Letter of Intent" to fund lifeguard salaries at Makena retroactive to July 01, 2017 until a new MOA is agreed upon and signed by both parties (State Parks and County of Maui)? This would ease a lot of issues this situation is causing on Maui. Thank you for your prompt attention to this request.

Mahalo,

Colin Yamamoto
Battalion Chief, Ocean Safety
County of Maui, Dept. of Fire & Public Safety
21 Kinipopo St., Wailuku, HI 96793
Office 808-463-3850; Cell 808-357-3023;

ATTACHMENT 4

Colin Yamamoto - Lifeguard Costs and Contracts

From: "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov>
To: "rwesterman@kauai.gov" <rwesterman@kauai.gov>, "colin.yamamoto@co.maui.hawaii.gov" <colin.yamamoto@co.maui.hawaii.gov>
Date: 8/25/2017 5:51 PM
Subject: Lifeguard Costs and Contracts
CC: "Carpenter, Alan B" <alan.b.carpenter@hawaii.gov>, "Tomczyk, Piikea" <piikea.tomczyk@hawaii.gov>
Attachments: Lifeguard COSTS 0823.pdf

Aloha Folks: As always, mahalo for your continued patience on this first quarter calculation and allotment for the WSO's at our 4 DSP beaches. Attached above is the current cost submission by the four counties. The DLNR Chair signed and staff has transmitted three of the four contracts to the AG for review and approval. The Oahu cost estimates are still being examined for the one tower at the Keawaula portion of Kaena Point State Park.

Jim: please consider if your WSO ops would be sufficient if only the first 8 positions were funded this quarter.

Everybody: Below is the total Hawaii Division of State Parks operating budget for this FY, at about 12 million dollars. The FY17 lifeguard cost was: **\$1,856,535.00**. The new and increased cost to fund all requests for WSO staff salary is @ **\$3,005,781.63**. *This is a \$1,149,246 increase.*

- Hapuna is funded out of DSP revenue from our special fund
- Makena and Ke'e are funded out of our general fund allocation
- Keawaula is funded by revenue collected by the DLNR Land Division in the Special Land and Development Fund.

DSP Funding Sources for FY2018 are as follows:

• General Fund	\$5,196,408
• Special Fund (TAT)	\$2,000,000
• Special Fund (based on projected revenue)	\$4,800,000
	TOTAL: \$11,996,408

You will notice that the Statewide ops budget for DSP is significantly less than any of the four County parks and recreation budgets.

At this current cost - which currently excludes equipment - DSP is severely challenged and would have to reduce other statewide park spending to simply cover the annual salary cost of the WSO's given the 1 million dollar cost increase. Certain events, such as closing Iao Valley State Monument due to flooding eliminated a lucrative source of income via our parking fees - which only recently has been reopened.

Moving forward, DSP urgently requests that the counties reevaluate actual WSO cost for the second quarter.

DSP will be asking for Governor's approval at the next Legislative Session to request that the two contracts funded by both the DSP and LD income be converted to general funds, and that the current general fund allocation for DSP be increased to reflect the increased general fund cost of the other two life guard contracts. ***As such - it is critical that DSP and the counties collaborate on as accurate as possible the actual costs and that there is concurrence when this request is submitted.***

I had a rare opportunity yesterday when the Governor and his team came to meet with DLNR Division Staff to

discuss programs, issues, funding etc. DSP articulated that the current costs of the County Lifeguard contracts will be a high priority DSP funding request during our discussion.

Again, mahalo for your patience – we have been churning through these numbers and should be able to execute the first quarter payments – once costs are confirmed.



Curt Cottrell, Administrator
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl St. Honolulu, Hawaii, 96813

(808) 587-0289 phone
(808) 587-0311 fax

Colin Yamamoto - Maui Lifeguard Letter of Intent

From: "Tomczyk, Piikea" <piikea.tomczyk@hawaii.gov>
To: Colin Yamamoto <Colin.Yamamoto@co.maui.hi.us>
Date: 8/17/2017 3:09 PM
Subject: Maui Lifeguard Letter of Intent
CC: "Cottrell, Curt A" <curt.a.cottrell@hawaii.gov>, "Carpenter, Alan B" <al...>
Attachments: maui letter of intent.pdf

Aloha Colin,

Per Mayor Arakawa's request, please find attached the Letter of Intent for lifeguard services beginning July 1, 2017.

The original will follow in the mail.

As you are aware, we are very close to finishing the lifeguard MOA and intend to have that completed by next week.

If you have any questions, please let me know.

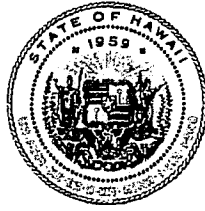
Mahalo and have a great weekend.

Piikea Tomczyk
State of Hawaii
Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl Street, #310
Honolulu, HI 96813

tel: (808) 587-0304
fax: (808) 587-0311
email: piikea.tomczyk@hawaii.gov

ATTACHMENT 5

DAVID Y. IGE
GOVERNOR OF
HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES INFORMATION
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAIKOLAWE ISLAND RESERVATION
LAND
STATE PARKS

August 17, 2017

Alan M. Arakawa, Mayor
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Honorable Mayor Arakawa,

RE: LETTER OF INTENT
Lifeguard Services at Makena Beach State Recreation Area

The County of Maui has provided services for lifeguards at Makena Beach State Recreation Area since 2008. The Department of Land and Natural Resources – Division of State Parks (Department) is currently working with the Maui Fire Department to update the Memorandum of Agreement (MOA) for Lifeguard Services that expired on June 30, 2017.

This letter of intent is to request that the County of Maui continue to provide critical lifeguard services at Makena Beach State Recreation Area and that the Department will reimburse the county for lifeguard salaries starting on July 1, 2017 until such time as the Amendment to the MOA is signed.

Sincerely,

A handwritten signature in black ink, appearing to read "Suzanne D. Case".

SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources



Suburban Fire Management Zones – Total Response Times at the 90 th Percentile						
FMZ Number	FMZ Name	2013	2014	2015	Aggregate 2013-2015	Number of Calls
016	Waichu Golf Course	14:06	14:29	14:57	14:36	219
020	Kamaile St	26:32	13:29	16:15	16:15	62
023	Wailuku Heights	13:17	14:36	13:34	13:40	205
029	Waikapu	13:52	16:36	14:05	14:29	140
038	Spreckelsville	13:56	15:40	17:07	14:44	97
040	Paia Mill	11:20	13:57	12:31	12:42	146
041	Kuau	10:28	11:40	11:57	10:57	131
044	Haiku	19:16	20:43	19:59	19:47	337
062	Makena	18:32	19:06	20:13	19:07	275
074	Haliimaile	18:52	17:29	17:06	17:25	124
077	Makawao	12:12	12:55	12:47	12:37	837
080	Aulii Dr	18:16	11:56	13:13	12:23	43
090	Hana Town	13:53	12:00	13:19	12:59	135
AGGREGATE		15:28	16:10	16:18	16:00	2751

Rural Fire Management Zones – Total Response Times at the 90 th Percentile						
		2013	2014	2015	Aggregate 2013-2015	Number of Calls
001	Olowalu	23:18	21:31	22:49	22:30	18
002	Launiupoko	26:02	21:20	23:40	23:59	170
012	Kapalua Plantation	17:28	20:44	18:45	18:05	51
013	Honokohau	30:45	32:02	31:52	32:02	84
014	West Maui Mauka	9:54	11:03	13:04	18:04	3
015	Kahakuloa	39:19	26:40	30:46	27:16	99
021	Mae Nui Farms	33:23	19:47	33:56	33:40	15
022	Iao Valley	14:05	17:17	16:27	15:18	51
030	Waiko	26:15	12:31	19:14	19:34	10
034	Kanaha	18:19	14:12	17:17	15:21	57
042	Baldwin	17:53	21:49	22:23	21:27	24
043	Holomua Rd	18:28	10:33	15:00	15:00	63
045	Pauwela	25:00	25:37	26:11	25:37	19
046	Kokomo Rd	20:18	21:51	21:33	20:55	14
047	W Kuiaha Rd	17:30	24:41	25:21	23:32	28
048	Ulumalu Rd	23:14	24:59	25:33	24:35	120
049	Ukumehame	27:35	26:22	35:36	27:35	9
050	McGregor Point	26:46	26:03	23:28	23:53	62
052	Windmills	N/A	N/A	N/A	N/A	0
053	Waikapu Golf Course	18:50	17:47	14:47	15:59	50
054	Kealia Pond / Mokulele	16:08	15:35	16:41	16:30	178
063	La Perouse	23:48	28:27	41:35	29:59	42

SESSION LAWS OF HAWAII

EIGHTEENTH STATE LEGISLATURE

REGULAR SESSION OF 1996

ATTACHMENT 7

ACT 190

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§353- Garnishment to cover nonbudgeted costs. All moneys received by windfall or earned by a committed person shall be subject to garnishment, levy, or any like process of attachment by the director for a cause of action or claim against the committed person in the following order of priority:

- (1) Restitution to victims;
- (2) Child support payments by order of the court;
- (3) Replacement costs for any facility damage that may have been caused by the committed person and all other costs associated with the facility damage; and
- (4) Reimbursement for the extraordinary cost of photocopying or postage which has been advanced by the department for litigation purposes.

All moneys collected by the department pursuant to paragraph (3) or (4) shall be used to reimburse, in whole or in part, the nonbudgeted costs and expenses."

SECTION 3. Section 353-22, Hawaii Revised Statutes, is amended to read as follows:

"§353-22 Earnings exempt from garnishment, etc. No moneys earned by a committed person and held by the department to any amount whatsoever, shall be subject to garnishment, levy, or any like process of attachment for any cause or claim against the committed person, except [for restitution to victims and child support payments by order of the court.] as provided for in section 353- ."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.¹

SECTION 5. This Act shall take effect upon its approval.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 190

S.B. NO. 865

A Bill for an Act Relating to Public Land Liability Immunity.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Millions of residents and visitors use our public beaches and the adjacent ocean for recreational purposes on a yearly basis. Unfortunately, in some instances drownings and other serious injuries have resulted from these activities. The counties have largely had to deal with the liability arising from the injuries and the resulting lawsuits. The legislature finds that counties need protection from liability arising from dangerous natural conditions in the ocean adjacent to public beach parks. The legislature finds that it is necessary to strike an equitable balance between the privilege of residents and visitors alike to enjoy public beaches in a responsible manner and the duty of the government to take reasonable measures to protect citizens from harm by providing adequate warning. Accordingly, the purpose of this Act is to establish a process in which the State and counties can provide both meaningful and legally adequate warnings to the public regarding

extremely dangerous natural conditions in the ocean adjacent to public beach parks. Specifically, this Act establishes a process by which public entities are provided protection from liability when they have provided adequate warning to the public through the design and placement of warning signs in our beach parks. The legislature believes that this Act will provide a process by which a legally adequate warning system can be developed at public beach parks which will increase public safety, reduce ocean-related accidents, and protect the State and counties from the unlimited liability they face with regard to activities in the ocean and at public beaches.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§663- Conclusive presumptions relating to duty of public entities to warn of dangers at public beach parks. (a) The State or county operating a public beach park shall have a duty to warn the public specifically of dangerous shorebreak or strong current in the ocean adjacent to a public beach park if these conditions are extremely dangerous, typical for the specific beach, and if they pose a risk of serious injury or death.

(b) A sign or signs warning of dangerous shorebreak or strong current shall be conclusively presumed to be legally adequate to warn of these dangerous conditions, if the State or county posts a sign or signs warning of the dangerous shorebreak or strong current and the design and placement of the warning sign or signs has been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the governor's task force on beach and water safety prior to approving the design and placement of the warning sign or signs.

(c) A sign or signs warning of other extremely dangerous natural conditions in the ocean adjacent to a public beach park shall be conclusively presumed to be legally adequate to warn of the dangerous natural conditions, if the State or county posts a sign or signs warning of the extremely dangerous natural condition and the design and placement of the sign or signs have been approved by the chairperson of the board of land and natural resources. The chairperson shall consult the task force on beach and water safety prior to issuing an approval of the design and placement of a warning sign or signs pursuant to this section.

(d) The State or county operating a public beach park may submit a comprehensive plan for warning of dangerous natural conditions in the ocean adjacent to a public beach park to the chairperson of the board of land and natural resources who shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The chairperson shall consult with the task force on beach and water safety prior to issuing an approval of the plan. The task force on beach and water safety may seek public comment on the plan. In the event that the chairperson approves the plan for the particular beach park after consulting with the task force and the State or county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate to warn for all dangerous natural conditions in the ocean adjacent to the public beach park.

(e) Neither the State nor a county shall have a duty to warn on beach accesses, coastal accesses, or in areas that are not public beach parks of dangerous natural conditions in the ocean.

(f) Neither the State nor any county shall have a duty to warn of dangerous natural conditions in the ocean other than as provided in this section.

(g) In the event that a warning sign, device, or system posted or established in accordance with this section is vandalized, otherwise removed, or made illegible,

the conclusive presumption provided by this section shall continue for a period of five days from the date that the vandalism, removal, or illegibility is discovered by the State or county. The State or county operating a public beach park shall maintain a record regarding each report of vandalism, removal, or illegibility that results in the replacement of a warning sign, device, or system at a State or county public beach park. The record shall include the date and time of the reporting and the replacement of the warning sign, device, or system. The State and county shall provide a copy of the record annually to the chairperson of the board of land and natural resources and the task force on beach and water safety.

(h) The chairperson shall consider the needs of the public to be warned of potentially dangerous conditions in the ocean adjacent to a public beach park prior to issuing an approval for the design and placement of a warning sign or a comprehensive plan. The chairperson may require warning devices or systems in addition to the signing before approving the design and placement of a warning sign, device, system or comprehensive plan provided in this section shall be a discretionary decision under chapter 662.

(i) Chapter 91, Hawaii Revised Statutes, shall not apply to any process, including any action taken by the chairperson, established or made pursuant to this section.

(j) Nothing in this section shall be construed to have an impact upon governmental liability for the performance of rescue services or duties and responsibilities of lifeguards other than the duty to warn as set forth in this section."

SECTION 3. There is established the task force on beach and water safety which shall be administratively attached to the department of land and natural resources. The task force shall provide consultation to the chairperson of the board of land and natural resources regarding the design and placement of warning signs, devices, or systems at public beach parks including any comprehensive plan submitted by the State or county operating a public beach park to the chairperson of the board of land and natural resources for approval. The task force shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board of land and natural resources, or a designated representative;
- (2) The director of business, economic development, and tourism, or a designated representative;
- (3) The chairperson of the department of oceanography at the University of Hawaii at Manoa, or a designated representative; and
- (4) Four persons appointed by the governor, each of whom shall be publicly employed water safety personnel; provided that the governor shall appoint one person from each of the respective counties.

The chairperson of the board of land and natural resources shall serve as chairperson of the task force. The task force shall submit a report of its recommendations to the legislature and the governor no later than twenty days prior to the convening of the 1997, 1998, and 1999 Regular Session.

SECTION 4. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 1996; provided that this Act shall be repealed on June 30, 1999.

(Approved June 17, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 191

S.B. NO. 1602

A Bill for an Act Relating to Airport Security.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 261-1, Hawaii Revised Statutes, is amended to read as follows:

“§261-1 Definitions. As used in this chapter[, unless the context otherwise requires]:

- [(1) “Aeronautics” means the science and art of flight, including but not limited to transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants and accessories, including the repair, packing, and maintenance of parachutes; the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports, or other air navigation facilities; and instruction in flying or ground subjects pertaining thereto;
- (2) “Aircraft” means any contrivance now known or hereafter invented, used or designed for navigation of or flight in the air;
- (3) “Airport” means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, including approaches, together with all airport buildings and facilities located thereon;
- (4) “Department” means the department of transportation;
- (5) “Director” means the director of transportation;
- (6) “Air navigation facility” means any facility used in, available for use in, or designed for use in, aid of air navigation, including any structures, mechanisms, light, beacons, markers, communicating systems, or other instrumentalities, or devices used or useful as an aid, or constituting an advantage or convenience, to the safe taking-off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities;
- (7) “Operation of aircraft” or “operate aircraft” means the use, navigation, or piloting of aircraft in the airspace over the State or upon any airport within the State;
- (8) “Airman” means any individual who engages, as the person in command, or as pilot, mechanic, or member of the crew, in the navigation of aircraft while under way, and any individual who is directly in charge of the inspection, maintenance, overhauling, or repair of aircraft engines, airframes, propellers, or appliances; and any individual who serves in the capacity of aircraft dispatcher, or air-traffic control-tower operator; but does not include any individual employed outside the

ATTACHMENT 8

MAKENA - 186820

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