

REQUEST FOR LEGAL SERVICES

Date: October 17, 2018
From: Don S. Guzman, Chair
Parks, Recreation, Energy, and Legal Affairs Committee

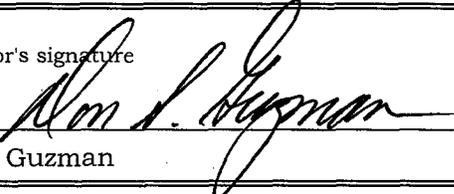
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jerrie Sheppard, Esq.

Subject: AUTHORIZING THE COUNTY TO ENTER INTO AN AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE OF RESCUE TUBES AT SPECIFIED MAUI COUNTY BEACH PARKS (PRL-45)

Background Data: Please revise the proposed resolution as reflected on the attached markup. A hard copy of the revised proposed resolution, approved as to form and legality, is requested with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Don S. Guzman	Contact Person <u>Carla Nakata</u> (Telephone Extension: 7659)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 24, 2018
REASON: To submit for posting on the Council's November 2, 2018 meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

prl:ltr:045acc01:cmn

Attachment

Resolution

No. _____

AUTHORIZING THE COUNTY TO ENTER INTO
AN AGREEMENT REGARDING THE PLACEMENT AND
MAINTENANCE OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS

WHEREAS, the Rotary Club of Lahaina Sunrise, the Rotary Club of Lahaina, and the Rotary Club of Lahaina Sunset ("Rotary Clubs") desire to place Rescue Tubes at County beach parks; and

WHEREAS, the County of Maui sees the potential benefit of Rescue Tubes being placed at County beach parks; and

WHEREAS, the details of the arrangement are set forth in the Agreement Regarding the Placement and Maintenance of Rescue Tubes at Maui County Beach Parks, attached hereto and incorporated herein as Exhibit "1"; and

WHEREAS, Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to act by resolution; now, therefore,

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

1. That it hereby expresses its appreciation for the Rotary Clubs' willingness to undertake the placement and maintenance of rescue tubes at County beach parks; and

Resolution No. _____

2. That it authorizes the Mayor, or the Mayor's authorized representative, to execute any documents related to the fulfillment of the intent of this resolution; and

3. That certified copies of this resolution be transmitted to the Mayor, the Fire Chief, the Director of Parks and Recreation, ~~and~~ the Rotary Club of Lahaina Sunrise, the Rotary Club of Lahaina, and the Rotary Club of Lahaina Sunset.

APPROVED AS TO FORM AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui
2015-3881
2018-09-06 Rescue Tubes Reso West Maui

**AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

This Agreement made this _____ day of _____, 20____ by and between the County of Maui, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County"), and the Rotary Club of Lahaina Sunrise, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 913, Lahaina, Hawaii 96767; the Rotary Club of Lahaina, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 10127, Lahaina, Hawaii 96761; and the Rotary Club of Lahaina Sunset, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 12861, Lahaina, Hawaii 96761, hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, Rescue Tubes are flotation devices intended to be deployed by beachgoers to assist distressed swimmers while they await rescue; and

WHEREAS, Rescue Tubes are typically affixed to stands on the beach in areas where they can be accessed by beachgoers in emergency situations; and

WHEREAS, the Rotary Club of Lahaina Sunrise, the Rotary Club of Lahaina, and the Rotary Club of Lahaina Sunset (hereinafter collectively referred to as the "RESCUE TUBE GROUP") desires to place and maintain Rescue Tube Stations at various Maui County beach parks; and

WHEREAS, County sees the potential benefit of Rescue Tubes being placed at Maui County beach parks.

NOW, THEREFORE, County and the RESCUE TUBE GROUP hereby agree as follows:

1. Term: This Agreement shall commence upon execution and expire on December 31, 20²¹~~19~~. This Agreement may be renewed for additional ~~one (1)~~ ^{three (3)} year terms upon written agreement of the Parties. This Agreement shall automatically terminate upon failure to renew prior to the expiration of the term.
2. Scope: This Agreement shall only pertain to the County Beach Parks listed herein and shall not be interpreted to grant permission to or authorize the placement of Rescue Tubes or Rescue Tube Stations at any other areas.
3. Costs: RESCUE TUBE GROUP shall be responsible for all costs and expenses in relation to this Agreement.

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4. Rescue Tube Stations: RESCUE TUBE GROUP shall be responsible for the construction, placement, and maintenance of the Rescue Tube Stations. RESCUE TUBE GROUP shall be responsible for the design and function of all Rescue Tube Stations. RESCUE TUBE GROUP shall use its reasonable best efforts to ensure that the Rescue Tube Stations are safe and easily usable by beachgoers. RESCUE TUBE GROUP shall use its reasonable best efforts to ensure that the Rescue Tube Stations are placed in safe areas that will provide reasonable access for beachgoers. RESCUE TUBE GROUP shall consult with the County of Maui Department of Parks and Recreation ("Parks") and the County of Maui Department of Fire and Public Safety ("Fire") in regards to the locations where the Rescue Tube Stations shall be placed. RESCUE TUBE GROUP shall acquire all necessary permits and receive all necessary approvals regarding installation and placement of the Rescue Tube Stations. RESCUE TUBE GROUP shall coordinate with Parks for the physical placement of the Rescue Tube Stations. RESCUE TUBE GROUP shall be responsible for ensuring that Rescue Tubes are available at all Rescue Tube Stations.

5. County Beach Parks: RESCUE TUBE GROUP may place Rescue Tubes and Rescue Tube Stations at the following beach parks:

- DT Fleming Park
- Hanakaoo Park
- Honokowai Park
- Kamehameha Iki Park
- Launiupoko Park
- Papalaua Wayside Park
- Pohaku Park
- Puamana Park
- Ukumehame Beach Park
- Wahikuli Wayside Park

6. Maintenance: RESCUE TUBE GROUP shall be responsible for the maintenance of the Rescue Tubes and the Rescue Tube Stations. RESCUE TUBE GROUP shall be responsible to conduct, at a minimum, monthly inspections of the Rescue Tubes and the Rescue Tube Stations. RESCUE TUBE GROUP shall keep a maintenance log for the term of this Agreement, including renewal terms, and shall produce it to County upon request. County shall have the right, but not the obligation to inspect the Rescue Tubes and Rescue Tube Stations and request that maintenance be performed by RESCUE TUBE GROUP and RESCUE TUBE GROUP shall perform requested maintenance within a reasonable time period.

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7. Replacement of Rescue Tubes: In the event that the Rescue Tubes are missing or need to be replaced, RESCUE TUBE GROUP shall be responsible for replacement.

8. Park Hours: All activities occurring in County Beach Parks shall take place during hours in which the respective County Beach Parks are open to the public, unless another agreement is made, in writing with Parks.

9. Public Education: RESCUE TUBE GROUP shall be required to provide public education in regards to the Rescue Tubes and Rescue Tube Stations as it sees fit.

10. Relocation: RESCUE TUBE GROUP may relocate its Rescue Tube Stations upon consultation with Parks and Fire. Upon request of County, within 30 calendar days, RESCUE TUBE GROUP shall be required to relocate any Rescue Tube Station at RESCUE TUBE GROUP's own cost and expense.

11. Removal: Upon request of County, RESCUE TUBE GROUP shall remove any Rescue Tube Stations within 30 calendar days of receipt of written notice. Upon termination or cancellation of this Agreement, as provided herein, RESCUE TUBE GROUP shall remove all Rescue Tubes and Rescue Tube Stations within five (5) business days and return the area to its original condition, repairing any damage, and removing all debris.

12. Public Notice: RESCUE TUBE GROUP shall be responsible for providing adequate notice to the public upon relocation, removal, or maintenance of the Rescue Tubes or the Rescue Tube Stations at County Beach Parks.

13. Notice: All notices required under this Agreement shall be in writing and addressed to the party to be notified at the following address:

If to County, then to:
Director
Department of Parks and Recreation
700 Halia Nakoa Street, Unit 2
Wailuku, Hawaii 96793

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cc: Fire Chief
Department of Fire and Public Safety
200 Dairy Road
Kahului, Hawaii 96732

If to Rotary Club of Lahaina Sunset, then to:
President
Rotary Club of Lahaina Sunset
P.O. Box 12861
Lahaina, Hawaii 96761

14. Insurance: Unless otherwise approved in writing and jointly agreed to by the Director of Parks and Recreation, the Fire Chief and the Director of Finance the policy or policies of insurance maintained by RESCUE TUBE GROUP shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to do business in the State of Hawaii and rated A - VII by A M Best. RESCUE TUBE GROUP shall procure and maintain and at its sole expense, at all times during the term of this Agreement coverage for injuries to persons or damages to property which may arise from RESCUE TUBE GROUP's performance of the work as set forth in this Agreement. This coverage shall be on a primary basis and any insurance or self-insurance program purchased by the County shall not respond except on an excess basis. The coverage will be written on an occurrence form with dedicated limits to this Agreement. The procurement of this insurance, as well as the County's acceptance of the insurance maintained by RESCUE TUBE GROUP is not intended to and shall not in any manner limit or quantify the liabilities or obligations assumed by RESCUE TUBE GROUP under this Agreement. Defense cost shall be outside the limits and will not erode the limit of liability. The policy shall provide the following minimum limits:

- i. Bodily Injury and Property Damage Combined Single Limit;
- ii. \$1,000,000 per occurrence; and
- iii. \$2,000,000 aggregate.

RESCUE TUBE GROUP shall agree to endorse the policy naming the County of Maui, its elected and appointed officials, directors and employees as an Additional Insured under the policy with a CG 026 Additional Insured - Designated Person or Organization endorsement or its equivalent. RESCUE TUBE GROUP shall provide the County with the original certificate and endorsements evidencing the required coverage. The Certificate of insurance

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shall be provided during the renewal of the policy term and/or at the extension of this Agreement.

If during the term, or any additional terms, of this Agreement higher limits of insurance than those mentioned herein above shall be appropriate, customary and generally recommended for similar properties utilized for similar uses in the County of Maui, then upon request by County, RESCUE TUBE GROUP shall promptly procure such higher limits.

15. **Indemnification:** RESCUE TUBE GROUP shall indemnify, defend, and hold harmless the County, its directors, employees, and agents, from and against any and all liability, including serious bodily injury and death, in relation to any and all claims, suits, and demands, arising out of, or in connection with this Agreement. RESCUE TUBE GROUP further agrees to be responsible for any and all costs incurred by County, including Attorney's fees, arising out of, or in connection with this Agreement. The provisions of this paragraph shall survive the termination or cancellation of this Agreement.

16. **Cancellation:** Either party may, with or without cause, cancel this Agreement with five (5) business days, written notice.

17. **Governing Law:** This Agreement and the rights and obligations of the Parties shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

18. **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.

19. **Counterparts:** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

20. **Assignment:** This Agreement may not be assigned to another party without the written consent of the County.

21. **No Property Rights:** Nothing in this Agreement shall be interpreted or construed to transfer of any property rights to RESCUE TUBE GROUP. This Agreement is not intended to be a lease, license, easement, permit, concession, or right of entry.

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OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

22. Effective Date: This Agreement shall be effective as of the date first written above.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

[EXECUTION PAGES TO FOLLOW]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

APPROVAL RECOMMENDED:

COUNTY OF MAUI

Fire Chief
Department of Fire and Public Safety

By _____
ALAN M. ARAKAWA
Its Mayor

BUTCH KAALA BUENCONSEJO
Director of Parks and Recreation

ROTARY CLUB OF LAHAINA SUNRISE

By _____
(Signature)
Anne Biedel
(Print Name)
Its _____
(Title)
Past President
(Title)

**APPROVED AS TO FORM
AND LEGALITY:**

JEFFREY DEOKA
Deputy Corporation Counsel
County of Maui
2015-3881
2018-08-07 Rescue Tube Agreement West Maui

ROTARY CLUB OF LAHAINA

By _____
(Signature)
DARRELL NG
(Print Name)

Its _____
(Title)
President - RC Lahaina
(Title)

ROTARY CLUB OF LAHAINA SUNSET

By _____
(Signature)
Heidi Dollinger
(Print Name)
Its _____
(Title)
President
(Title)