

HFC Committee

From: Karla Peters <Karla.Peters@co.maui.hi.us>
Sent: Tuesday, November 26, 2019 5:42 PM
To: HFC Committee
Subject: HFC-33
Attachments: Agreement of Joint Use with State.pdf

Aloha,

Per discussion in our meeting today, attached is the Agreement of Joint Use between the State of Hawaii and the County of Maui.

Please let me know if you have any questions.

Thank you!
Karla

Karla H. Peters

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Our Mission: "Provide safe, satisfying and cost effective recreational opportunities for the residents of and visitors to Maui County."

AGREEMENT OF JOINT USE

THIS AGREEMENT, made and entered into this 1st day of JULY, 1972, by and between the STATE OF HAWAII, hereinafter referred to as the "State," by its Governor, JOHN A. BURNS, and the COUNTY OF MAUI, hereinafter referred to as the "County," by its Mayor, ELMER F. CRAVALHO;

W I T N E S S E T H:

WHEREAS, maximum utilization of public property used, intended or suitable for recreational and/or educational purposes is both desirable and necessary in order for the citizens of Hawaii to realize and enjoy the optimum benefits of their tax revenues; and

WHEREAS, the cooperative efforts of the State of Hawaii, through its Department of Education, and the County of Maui, through its Department of Parks and Recreation, in planning for the joint use of publicly-owned property used, intended or suitable for recreational and/or educational purposes would provide thereby a more efficient and economical scheme of utilizing said property and thus afford to the residents of the County of Maui increased opportunities for the beneficial use and enjoyment of the same,

NOW, THEREFORE, in consideration of the premises and in further consideration of the mutual agreements and covenants hereinafter contained, the parties hereby enter into the following agreement:

I. PURPOSE OF AGREEMENT.

This Agreement is for the purpose of identifying and enumerating the duties and responsibilities to be borne by both parties in their joint use and planning of the properties of the State and the County. The purpose will be accomplished and the common use exercised in the manner hereinafter set forth.

II. DEFINITIONS.

For the purposes of this Agreement, the following terms, phrases, words and their derivation shall have the meaning given herein. When not inconsistent with the context, words used in the plural number include the singular number, and words in the singular number include the plural number.

A. "Party" shall refer to the Department of Parks and Recreation of the County of Maui or the Department of Education of the State of Hawaii.

B. "Requesting Party" shall refer to the party requesting the loan of the property under the general control of the other party.

C. "Lending Party" shall refer to the party which has loaned or has been asked to loan the property under its control.

D. "Property" shall refer to the public grounds, buildings, facilities and equipment under the control of the County of Maui through its Department of Parks and Recreation or the State of Hawaii through its Department of Education and which is used, intended or suitable for recreational and/or educational purposes.

E. "Maintenance" shall mean the care, preservation and repair of the subject property so as to render it safe and suitable for its practical and ordinary uses.

F. "Special Activities" shall mean those activities which are not regularly scheduled on an annual basis.

III. USE OF SCHOOL PROPERTY BY THE DEPARTMENT OF PARKS AND RECREATION OF THE COUNTY OF MAUI.

The Department of Education, through its district superintendent or his duly authorized officers, employees or agents, shall upon the request by the Department of Parks and Recreation of the County of Maui make public school grounds, buildings, facilities and equipment available after school hours for use by the Department of Parks and Recreation whenever such can be done without interference with the normal and usual activities of the school and its pupils concerned and with the adult education program.

IV. USE OF COUNTY PROPERTY BY THE DEPARTMENT OF EDUCATION OF THE STATE OF HAWAII.

The Department of Parks and Recreation of the County of Maui, through its duly authorized officers, employees and agents, shall whenever practicable and without interfering with or inconveniencing the recreational or other programs under its sponsorship or supervision make available to the Department of Education, upon request, property under its control, sponsorship, supervision, or ownership, and normally used for recreational and/or educational purposes not inconsistent with the goals and activities of the County of Maui.

1. Exclude those under lease or concession.
2. Retain right of granting and proceeding for review and administration of concessions.

V. USE OF PROPERTY.

Each party shall make a bona fide effort to comply with the requests of the other party and shall not revoke such permission without good and substantial cause, notice of which shall be given to the requesting party without delay.

A. Request Procedure - The requesting party shall request use of property in accordance with procedures as outlined in departmental policies of the lending party, copies attached hereto.

B. General Schedule of Use - The parties shall prepare a general schedule of use of their property by designating specified days, weeks or months reserved for regularly scheduled annual activities. The general schedule shall serve as a guide in the planning and scheduling of special activities to avoid conflicts in the use of the particular property requested.

C. Use by Other Parties - This Agreement shall not preclude the use of the property of either party by other parties not privy to this Agreement. Such approval may be conditioned upon terms other than those required to be performed in this Agreement; however, both parties to this Agreement shall consider the requests by parties not privy to this Agreement in good-faith and with an accommodating attitude in the best interest of the general public.

VI. MAINTENANCE AND CHARGES.

A. Except when otherwise provided, each party shall be primarily responsible for the maintenance of all property under its control, except as provided in contracts covering concessions, etc.

B. Requesting party may agree in writing to undertake the responsibilities of maintenance of any property it

utilizes for a substantial period or periods of time and which is under the control of the lending party and may also agree to pay for utilities and supplies arising out of the use of such property.

C. The party responsible for the maintenance of property under its control may charge the requesting party costs of maintenance, utilities and supplies required and expended for the operation and safety of said property during the term of its use by the requesting party. In addition to the above-mentioned charges, the lending party may assess the requesting party for any damages suffered as a result of the requesting party's use of occupation of the property, damages due to reasonable wear and tear excepted.

D. The parties may at any time agree to a general charge for the use of designated properties in lieu of specific and individual billings for each separate use of the properties.

VII. SUPERVISION.

Each party shall assume the responsibilities of supervising and managing all activities which may take place upon or in the grounds, buildings and facilities loaned to it.

VIII. ADDITIONS AND IMPROVEMENTS.

Whenever feasible, the planning, development and/or improvement of the properties selected for joint use shall be initiated after joint consultation and consistent with the Master Plan of the County of Maui, agreed to between the State, through its Department of Education and its District Office, and the County, through its Department of Parks and Recreation and Department of Finance of the County of Maui. It is

further understood that nothing contained herein shall preclude either or both parties from consulting with and considering the views and/or recommendations of other governmental agencies within their respective jurisdictions or with private consultants as the need may be. The expenses for retaining private consultants shall be absorbed by the party responsible for their retainment. Resources to develop these properties may be procured independently or jointly by either party.

All additions or improvements shall be maintained by the party who controls the property to which the addition or improvement was made unless said maintenance has been expressly assumed by the other party through a written agreement to that effect.

IX. LIABILITY.

Liability for any damages resulting from the negligent maintenance of the property mentioned herein shall be assumed by the party having the responsibility of maintaining said property at the time that the damages resulted.

Liability for any damages resulting from the negligent supervision of activities occurring on or in the grounds, buildings or facilities mentioned herein shall be assumed by the party responsible for the sponsorship and/or supervision of the said activities.

In no event, however, shall the assumption of the maintenance of the property or the supervision of the activities by a party not responsible therefor subject such party to liability for damages arising out of its negligent maintenance or supervision, provided that the consent of the responsible party to such assumption of said

maintenance or supervision was secured prior to or during said maintenance or supervision.

X. AMENDMENTS.

There may be no modification of the Agreement, except in writing, executed with the same formalities as this instrument by the parties hereto.

XI. DISPUTES RELATING TO THIS CONTRACT TO BE HANDLED BY THE ARBITRATION COMMITTEE.

Any controversy or dispute arising out of or relating to this contract or to a breach or alleged breach thereof shall be referred to a Committee of Arbitration, one to be appointed by the State, the second to be appointed by the County, and the third to be a person appointed by agreement by both the State and the County. The decision of this committee shall be final and conclusive on both parties to this contract.

XII. CANCELLATION BY EITHER PARTY.

This Agreement shall continue in force and govern all transactions between the parties hereto until canceled or terminated by either party, but it is agreed that either party shall have the privilege, with or without cause, to cancel and annul this Agreement at any time upon sixty (60) days written notice by registered mail, or personal delivery of notice to the other party.

IN WITNESS WHEREOF, the parties hereto have executed these presents on the date first above written.

COUNTY OF MAUI

STATE OF HAWAII

By Elmer F. Cravalho
ELMER F. CRAVALHO
Its Mayor

By John A. Burns
JOHN A. BURNS
Its Governor

DEPARTMENT OF PARKS
AND RECREATION

DEPARTMENT OF LAND AND
NATURAL RESOURCES

By *Shiro Marden*
Its Director

BY *Sunao Kido*
SUNAO KIDO
Its Chairman

APPROVED AS TO FORM

DEPARTMENT OF EDUCATION

By *Atuelo*
COUNTY ATTORNEY
County of Maui

By *Shiro Amioka*
SHIRO AMIOKA
Its Superintendent

By *Andy Nii*
ANDY NII
Its District Superintendent

APPROVED AS TO FORM

By *Ray E. King*
DEPUTY ATTORNEY GENERAL
State of Hawaii