

MICHAEL P. VICTORINO
Mayor

ROWENA M. DAGDAG-ANDAYA
Director

JORDAN MOLINA
Deputy Director

WADE SHIMABUKURO, P.E.
Development Services Administration

RODRIGO "CHICO" RABARA, P.E.
Engineering Division

JOHN R. SMITH, P.E.
Highways Division

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS
200 SOUTH HIGH STREET, ROOM 434
WAILUKU, MAUI, HAWAII 96793
January 10, 2022

RECEIVED
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OFFICE OF THE
COUNTY CLERK

Ms. Michele M. Yoshimura
Budget Director, County of Maui
200 South High Street
Wailuku, Hawaii 96793

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P Victorino

Mayor
1/14/22

Date

For Transmittal to:

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Members:

SUBJECT: NOTIFICATION OF GRANT REVENUE – PRIVATE DONATIONS

In accordance with Ordinance No. 5217, Bill 46 (2021) Draft 1 Fiscal Year 2022 Budget, we are hereby transmitting to you a copy of the Cost Sharing Agreement for the construction of a traffic roundabout for the intersection of Maui Lani Parkway and Kamehameha Avenue, along with a copy of the check received from Maui Lani Partners (developer) for their agreed upon pro rata share contribution of \$610,340.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me at Ext. 7272.

Sincerely,

A handwritten signature in black ink, appearing to be "Rowena Dagdag-Andaya".

Rowena Dagdag-Andaya
Director, Department of Public Works

COUNTY COMMUNICATION NO. 22-21

**COST SHARING AGREEMENT FOR THE CONSTRUCTION OF A TRAFFIC ROUNDABOUT
FOR THE INTERSECTION OF MAUI LANI PARKWAY AND KAMEHAMEHA AVENUE**

THIS AGREEMENT is made and entered into this 14th day of August, 2018, by and between MAUI LANI PARTNERS, a Hawaii general partnership, whose principal place of business and mailing address is 1100 Alakea Street, Suite 2200, Honolulu, Hawaii 96813, hereinafter referred to as the "Developer", and the COUNTY OF MAUI, a body politic and corporate, and a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Hawaii 96793, acting through its DEPARTMENT OF PUBLIC WORKS, hereinafter referred to as the "Department". (The Developer and the Department are sometimes collectively referred to in this Agreement as the "Parties" and individually as a "Party".)

WITNESSETH:

WHEREAS, the Developer is the developer of Maui Lani, a multi-phased master planned community located in Kahului, Maui, Hawaii, consisting of single-family units, multi-family units, a medical center, recreational facilities, commercial businesses, and a school; and

WHEREAS, the Department requires the design and construction of roadways and traffic improvements in the Maui Lani development to be constructed by the Developer; and

WHEREAS, the Developer and the Department entered into a Master Roadway Agreement on June 3, 2003, which requires the Developer to install a new traffic signal when warranted for the intersection of Maui Lani Parkway and Kamehameha Avenue in Kahului; and

WHEREAS, the Developer retained a professional traffic and civil engineering firm to design and prepare construction plans, specifications and other contract documents for the construction of the traffic signal, all of which were completed at the Developer's sole cost in 2015; and

WHEREAS, the Department no longer desires to install a traffic signal at the intersection of Maui Lani Parkway and Kamehameha Avenue in Kahului, but, instead, has decided to construct a traffic roundabout at the subject intersection (the "Roundabout Project"); and

WHEREAS, the Department has proposed that the Developer contribute to a portion of the cost of the Roundabout Project based on the Developer's estimated contribution toward the previously designed traffic signal, such portion being equal to 31.5% of the cost of the

construction (but not the design) of the Roundabout Project, but not more than \$610,340.00;
and

WHEREAS, the Department acknowledges that the Developer, through its financial contribution to the Roundabout Project, will satisfy its traffic signal commitment for the subject intersection that is set forth in the Master Roadway Agreement;

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual promises and benefits of the Parties, it is hereby understood and agreed by the Developer and the Department that:

A. ROUNDABOUT PROJECT DESIGN

1. The Department shall be responsible for the design of the Roundabout Project, which design shall include, but shall not be limited to, the following:

(a) Traffic Volume Analysis. Perform the necessary traffic studies and engineering analysis to be used in the design of the Roundabout Project.

(b) Archaeological Monitoring Plan. Obtain State Historic Preservation Division of the State Department of Land and Natural Resources approval of the Roundabout Project and related grading and excavation work.

(c) Geotechnical Engineering. Perform all necessary sub-surface exploration necessary to create a soils report to provide design recommendations for the proposed utilities and pavement sections.

(d) Permits. Obtain all necessary permits required to construct the Roundabout Project.

(e) Plans and Specifications. Provide to the Developer the pre-bid plans and specifications for the Roundabout Project, which shall be approved by the Director of Public Works (the "Director") prior to execution of the contract for the construction of the Roundabout Project. Such plans and specifications shall comply with all applicable laws, rules, regulations and standards, including County procurement laws and regulations related to use of public funds.

(f) Design Cost. The Department acknowledges that the Developer has incurred substantial cost to design the traffic signal for the subject intersection required by the Master Roadway Agreement and, as such, the Developer shall have no

responsibility to contribute to the cost of the design of the roundabout. Responsibility and liability for all aspects of the design of the Roundabout Project shall rest solely with the Department. The Developer shall have no responsibility or liability whatsoever for any aspect of the design of the Roundabout Project.

B. ROUNDABOUT PROJECT CONSTRUCTION

1. The Department shall be responsible for the construction of the Roundabout Project, which construction shall include, but shall not be limited to, the following:

(a) Construction Costs. As soon as the final construction plans and specifications, including the contract bid documents (collectively, the "Contract Documents"), have been completed by the Department, the Contract Documents shall be submitted to the Developer, together with a cost estimate for construction of the Roundabout Project that has been prepared by a professional engineer. The Developer shall review and comment on the Contract Documents only for the purpose of determining and evaluating (i) the base scope of work from which change orders shall be measured, (ii) any cost implications of the Contract Documents, and (iii) any impositions on the Maui Lani Community and the Maui Lani Community Association. The Developer's review of the Contract Documents shall not be for design or engineering purposes. The Department shall contract with the lowest responsible and responsive bidder to construct the Roundabout Project, pursuant to applicable state, county and federal laws and regulations. The total construction cost of the traffic roundabout, including necessary site work and appurtenances (e.g., signage, striping and paving), as set forth in the bid, shall be called the "Construction Cost". The Construction Cost shall also include all contract-related costs, including independent (special) structural inspection, soils and material testing fees, contractor's completion and performance bonds, post-construction warranty bond, if any, builder's risk insurance, and building permit fees, all of which shall be payable under the construction contract. Subsequent changes to the Construction Cost pursuant to change orders that have been approved by the Developer and the Department shall be included in the Construction Cost.

(b) Change Orders. Until the Developer has paid the Developer's Maximum Contribution (as defined below), the Department (i) shall use commercially reasonable efforts to minimize the scope and cost of all change orders relating to the construction of the Roundabout Project and (ii) shall not authorize any change order for construction of

the Roundabout Project without prior written approval of the Developer; provided, however, that, if the Developer does not deliver a written response to the Department's request for approval of a change order (whether in the form of an approval, a request for additional information, or a rejection) within 30 days after the date that the Developer receives the change order request from the Department, then the Developer will be deemed to have approved the change order request without modification. Upon such approval (or deemed approval) by the Developer, if appropriate and if applicable, an adjustment to the Construction Cost shall be made. Change orders requested by the Department shall be limited to design corrections as described in Paragraph A above and in this Paragraph B only, and shall not include or cover upgrades or other additions to the original scope of work described in the Contract Documents; provided, however, that, after the Developer has paid the Developer's Maximum Contribution and, thus, has no liability whatsoever for any change orders, the Department shall have the right to make, at the Department's sole cost and expense, changes, upgrades and other additions to the original scope of work described in the Contract Documents.

If the Department and the Developer are not able to agree on the scope and/or cost of a proposed change order when such agreement is required under this Agreement (such disagreement is referred to in this Agreement as a "Dispute"), then the following shall apply:

(i) Pending final resolution of the Dispute, work on the Roundabout Project shall continue in accordance with directions from the Department.

(ii) Representatives of both the Department and the Developer shall meet in person to negotiate in good faith to resolve the Dispute.

(iii) If the Department and the Developer are unable to resolve the Dispute within 90 days after commencement of the above-referenced negotiation, then resolution of the Dispute shall be by binding arbitration before a single arbitrator, which must be initiated by written demand therefor by either party within 120 days after commencement of the above-referenced negotiation.

(iv) The arbitration shall be conducted on Maui (unless another location is mutually agreed upon) and administered by Dispute Prevention and Resolution, Inc. (or another dispute resolution group that is acceptable to the parties) ("DPR") in accordance with appropriate rules selected by DPR. The single arbitrator

shall be selected by mutual agreement of the parties, provided that if they cannot agree on the arbitrator within 20 days after the "arbitration initiation date" (as determined by DPR), then the arbitrator shall be selected through such procedures as DPR shall determine.

(v) The parties shall share equally all costs due and owing to DPR; provided, however, that each party shall bear its own attorney's fees and other costs incurred as a result of participating in arbitration.

(vi) The arbitrator's decision on the Dispute shall be final and binding on both parties, without appeal or review, except as permitted by Chapter 658A, Hawaii Revised Statutes, as amended.

(c) Compliance with Law. The Department shall comply with all rules and regulations, statutes, ordinances and other laws that are applicable to the Roundabout Project.

2. Inspection and Monthly Progress and Inspection Meetings. The Department will make periodic inspections of the work in progress of the Roundabout Project. The Department and the Developer shall meet at reasonable intervals, but no less than at least once each month, to review the work in progress and to consider any change order requests.

3. Acceptance by the Department. Upon completion of construction of the Roundabout Project, and when all deficiencies are substantially completed, the Department shall provide a letter addressed to the Developer, signed by the Director, acknowledging that the Developer's obligation to signalize the intersection in accordance with the Master Roadway Agreement dated June 3, 2003 has been completely satisfied and that the Developer shall have no further obligations or liabilities for the maintenance, future modification or operation of the Roundabout Project.

C. CONSTRUCTION COST

1. Proportional Share of Construction Cost. The Developer and the Department shall share in the cost for the construction of the Roundabout Project on the basis that the Department shall pay sixty-eight and one half percent (68.5%) of the Construction Cost, and the Developer shall pay thirty-one and one half percent (31.5%), but not more than \$610,340.00, of the Construction Cost. The Developer's portion, as reflected in the previous sentence, is

referred to in this Agreement as the "Developer's Maximum Contribution". To be clear, in addition to paying a 68.5% share of the Construction Cost up to \$1,937,587.30, the Department shall pay every portion (i.e., 100%) of the Construction Cost that exceeds \$1,937,587.30, and the Developer shall pay no portion (i.e., 0%) of the Construction Cost that exceeds \$1,937,587.30.

2. Certification of Funds: Before the Department executes any construction contract(s) for the Roundabout Project construction, the Department and the Developer shall each certify to the other that funds are available to pay each Party's respective share of the Construction Cost. After such certifications are issued, the Department will then execute construction contract(s) for the Roundabout Project construction.

3. Developer's Payment of Construction Cost. The Developer will pay the Department the Developer's thirty-one and one half percent (31.5%) pro-rata share of each progress payment (up to the Developer's Maximum Contribution) that is approved by the Department and the Developer, less any retainage that is provided under the construction contract, within thirty (30) days after the Developer receives the Department's invoice for the Developer's pro-rata share of the contractor's approved draw request.

4. Change Orders. The Parties shall participate in the cost of change orders to the construction contract on a pro-rata basis at the ratio of sixty-eight and one half percent (68.5%) by the Department and thirty-one and one half percent (31.5%) by the Developer, subject to the provisions stated in Subparagraphs B.1(b) and C.1. above.

D. GENERAL TERMS AND CONDITIONS

1. Attorneys' Fees. If any legal action shall be brought by either Party to enforce or interpret any portion of this Agreement or to redress any breach by the other Party, then the prevailing party (if any) shall be entitled to recover reasonable attorneys' fees and costs.

2. Successors and Assigns. Except as otherwise specifically provided in this Agreement, this Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and assigns. The terms "Developer" and "Department" herein shall include their respective successors and assigns.

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

4. No Waiver. Any failure by a Party to insist on strict performance by the other Party of any of the terms and provisions of this Agreement shall not be deemed to be a waiver of any such terms or provisions or of the other Party's obligation to comply with such terms or provisions; and notwithstanding such failure, each Party shall have the right thereafter to insist upon the other Party's strict performance of such terms and provisions. Any waiver of the terms of this Agreement shall not be effective unless given in writing.

5. Indemnification. Subject to Chapter 3.16, Maui County Code, and to the extent permitted by law, the Department shall release, indemnify, protect, defend and hold harmless the Developer, the Maui Lani Community Association and each of the Developer's and the Maui Lani Community Association's respective employees, partners, affiliates, members, managers, officers, directors, employees, agents, contractors, representatives, successors and assigns (each an "Indemnified Party" and, collectively, the "Indemnified Parties"), from and against any and all claims, demands, debts, suits, proceedings, actions, causes of action, disputes, judgments, liabilities, losses, damages, liens, fines, penalties, costs, charges, fees, obligations, judgments, awards, and other expenses of every kind, nature, character and description whatsoever (including, without limitation, attorneys' fees and legal costs), whether asserted or unasserted, known or unknown, civil, criminal, administrative, arbitral or investigative, or at law or in equity under any theory of recovery, including claims for personal injury or death or property damage, (collectively, "Costs"), that may be made, brought, threatened or are pending against, or suffered, incurred or sustained by, any of the Indemnified Parties, directly or indirectly, arising out of or from, in connection with, by reason of, relating to, concerning, on account of, resulting from (or alleged to be resulting from), directly or indirectly, (i) the Roundabout Project, (ii) the performance of, or any breach by, the Department under this Agreement, (iii) the design, construction, quality, condition or repair of the improvements comprising the roundabout and the Roundabout Project, (iv) the use by the public of the improvements comprising the roundabout, (v) the Department's acts or omissions in connection with the roundabout and the Roundabout Project, (vi) injury to, or death of, any person at or near the roundabout, (vii) loss of, or damage to, property (including but not limited to loss of use thereof) in connection with the use of the improvements comprising the roundabout and the Roundabout Project, (viii) any amounts required to be paid or incurred by an Indemnified Party as a result of the enforcement of any mechanic's lien, (ix) the fact that the Developer or the Maui Lani Community Association owns or owned the land where the roundabout is located, or (x) or any of the above-stated reasons (collectively, a "Roundabout-Related Action"). The

obligations of the Department described in this paragraph shall not be limited by the availability, limits, or coverage of insurance carried by the Department, provided that the Department shall not be obligated to indemnify an Indemnified Party if and to the extent that the Roundabout-Related Action is the result of the fraud, gross negligence or willful misconduct of such Indemnified Party.

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

7. No Third-Party Beneficiary. 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 the Developer, the Department and their respective successors and assigns shall be entitled to claim any rights under, or to enforce any of the provisions of, this Agreement.

8. Notices. Any notice by either Party to the other shall be in writing and shall be personally delivered or sent by certified or registered mail to the receiving Party, as the case may be, addressed as follows:

If to the Department:
Department of Public Works
200 South High Street
Wailuku, Maui, Hawaii 96793
Attention: Director

If to the Developer:
Maui Lani Partners
1100 Alakea Street, Suite 2200
Honolulu, Hawaii 96813
Attention: Bill Mills

(The remainder of this page is intentionally left blank; the signature page follows.)

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

DEVELOPER:

MAUI LANI PARTNERS,
a Hawaii general partnership
By: Bill Mills Development Company, Inc.
Its Managing General Partner



BILL MILLS
President

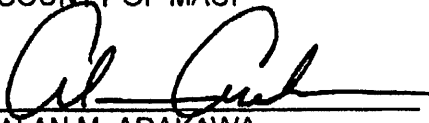
APPROVAL RECOMMENDED:



DAVID C. GOODE
Director of Public Works

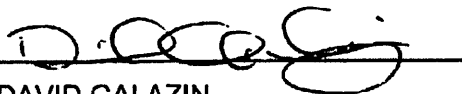
DEPARTMENT:

COUNTY OF MAUI



ALAN M. ARAKAWA
Mayor

APPROVED AS TO FORM
AND LEGALITY:

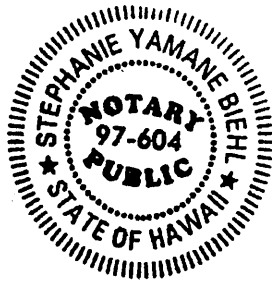


DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

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

On this 7th -day of August, 2018, before me personally appeared Bill Mills, 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 if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Signature: [Handwritten Signature]

Print Name: Stephanie Yamane Biehl
Notary Public, State of Hawaii

My commission expires: October 19, 2019

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated at time of notarization</u>	# Pages: <u>11</u>
Notary Name: <u>Stephanie Yamane Biehl</u>	Judicial Circuit: <u>First</u>
Doc. Description: <u>Cost Sharing Agreement for the Construction of a Traffic Roundabout for the Intersection of Maui Lani Parkway and Kamehameha Avenue</u>	
Notary Signature: <u>[Handwritten Signature]</u>	
Date: <u>August 7, 2018</u>	

STATE OF HAWAII

)

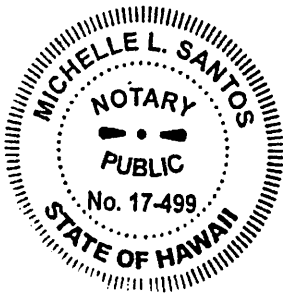
) SS

COUNTY OF MAUI

)

On this 14th-day of August, 2018, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said Instrument was signed and sealed on behalf of said County of Maui by authority of its Charter, and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

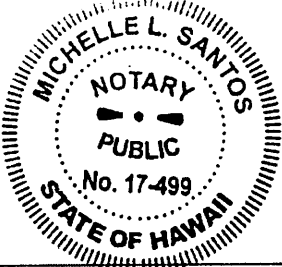


Signature: Michelle L. Santos

Print Name: MICHELLE L. SANTOS
Notary Public, State of Hawaii

My commission expires: 12-31

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>8-14-18</u>	# Pages: <u>11</u>
Notary Name: <u>MICHELLE L. SANTOS</u>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>Cost Sharing Agreement</u>	
Notary Signature: <u>Michelle L. Santos</u>	
Date: <u>8-14-18</u>	



MAUI LANI

January 10, 2022

Mr. Rodrigo "Chico" Rabara,
Engineering Program Manager
Department of Public Works
Engineering Division
200 South High Street, Room 410
Wailuku, HI 96793

(Via Hand Delivery)

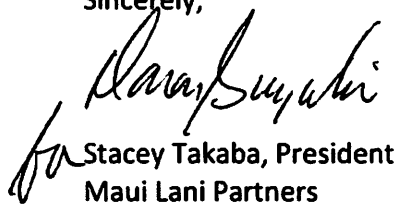
Subject: Roundabout at Maui Lani Parkway and Kamehameha Avenue Cost Share
Reimbursement, Project No. 16-50, Contract No. C6572.

Dear Mr. Rabara:

Enclosed is a cost share reimbursement check for \$610,340.00 for the roundabout at Maui Lani Parkway and Kamehameha Avenue. This reimbursement is submitted to fulfil our obligations under the Master Roadway Agreement dated June 3, 2003, and the Cost Share Agreement dated August 14, 2018.

Should you have any questions, please contact Mr. Daren Suzuki at 244-8730.

Sincerely,


Stacey Takaba, President
Maui Lani Partners

cc: Rowena Dagdag-Andaya

RECEIVED
COUNTY OF MAUI
2022 JAN 10 AM 11:11
DAREN SUZUKI
DEPARTMENT OF PUBLIC WORKS

MAUI LANI VILLAGE CENTER INC.1100 ALAKEA STREET, SUITE 2200
HONOLULU, HI 96813**FIRST HAWAIIAN BANK**999 BISHOP STREET
HONOLULU, HI 96813**6060**

59-101/1213

1/4/2022

PAY
TO THE
ORDER OF

County of Maui - Director of Finance

\$ 610,340.00

Six hundred ten thousand three hundred forty and 00/100***** DOLLARS

County of Maui
Director of Finance
Department of Public Works - Engineering Division

MEMO Proj#16-50;Contract#C6572;Maui Lani Cost Share 8/14/18

SECURITY FEATURES INCLUDED, DETAILS ON BACK

AUTHORIZED SIGNATURE

⑈006060⑈ ⑆121301015⑆ 01⑈020005⑈

MAUI LANI VILLAGE CENTER INC.

WWW.COMPUCHECKS.COM 888.398.5581

6060Roundabout at Maui Lani Parkway and Kamehameha Avenue
Project No. 16-50
Contract No. C6572
Cost Sharing Agreement Dated August 14, 2018
Maui Lani Reimbursement Share**MAUI LANI VILLAGE CENTER INC.**

WWW.COMPUCHECKS.COM 888.398.5581

6060

ENDORSE CHECK HERE

X

DO NOT WRITE / SIGN / STAMP BELOW THIS LINE
DEPOSITORY BANK ENDORSEMENT



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