

**MEMORANDUM OF AGREEMENT
FOR LIFEGUARD SERVICES**

THIS MEMORANDUM OF AGREEMENT FOR LIFEGUARD SERVICES, dated July 3, 2008, hereinafter referred to as "MOA," is made and entered into by and between the STATE OF HAWAII, by its Board of Land and Natural Resources, hereinafter referred to as the "State," and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, by its Mayor, whose address is 200 South High Street, Wailuku, Hawaii, hereinafter referred to as the "County."

WITNESSETH

WHEREAS, the State and the County desire to provide lifeguard services at Makena Beach, commonly referred to as "Big Beach," at Makena State Park, Island of Maui, Hawaii, hereinafter referred to as "Makena," as shown on the map attached hereto and incorporated herein as "Attachment 2," for the safety and protection of park beach users; and

WHEREAS, the County has the personnel and expertise to provide such lifeguard services; and

WHEREAS, the services do not admit of competition.

NOW, THEREFORE, the State and the County hereby agree as follows:

A. Agreement Period. The initial period of time covered by this MOA shall begin on the first day the lifeguards are on duty at Makena, but in no event prior to July 1, 2008, and shall conclude on June 30, 2009, unless sooner terminated as provided herein. The acquisition and any processes related to the acquisition of lifeguard equipment for lifeguards at Makena and the recruitment and training of lifeguards for Makena shall not be construed to begin the agreement period. This MOA may continue for additional periods as provided below.

B. The State

1. Administration. The Chairperson of the Board of Land and Natural Resources, or her designated representative, shall represent and act for the State in administering the terms and conditions of this MOA.

2. Payment.

a. The State shall pay to the Director of Finance of the County the sum of FIVE HUNDRED NINETY-FOUR THOUSAND SEVEN HUNDRED TWENTY-SEVEN AND NO/100 DOLLARS (\$594,727.00) as outlined on Attachment 1.

b. The State shall inform the County in writing at least sixty (60) days prior to the end of the initial agreement period or any additional agreement period of the availability or non-availability of funds to continue the lifeguard services provided herein for an ensuing agreement period.

(i) If funding is made available to continue the lifeguard services, the agreement period, the cost for services, the designation of beaches where lifeguard services are to be provided, or any other term, as specified in this MOA, may be amended in writing by mutual agreement of the parties.

(ii) If the State is unable to assure the County of the availability of such funds within the prescribed sixty (60) day period, or the State and County cannot agree upon proposed amendments to the MOA, the MOA shall terminate at the end of the agreement period then in effect.

c. In the event this agreement is extended for additional periods, all payments of funds shall be made to the Director of Finance of the County in quarterly payments payable in quarterly increments upon receipt of invoice at the beginning of each quarter.

d. The State shall use its best efforts to obtain funds to continue this MOA for additional periods.

3. State responsibility. The State shall be responsible, to the extent permitted by law, for damage or injury caused by the State's officers and employees in the scope of their employment provided that the State's liability for such damage or injury has been determined by a court or agreed to by the State. The State shall pay for such damage and injury provided that funds are appropriated and allotted for that purpose.

C. The County

1. **Administration.** The Mayor of the County, or a designated representative of the County, shall represent and act for the County in administering the terms and conditions of this MOA.

2. **Scope of Services.** During the entire agreement period, the County shall provide lifeguard services at Makena on a daily basis, including weekends and holidays, during the entire agreement period, which shall begin on the first day the lifeguards are on duty at Makena.

Furthermore, the County shall provide lifeguard services at such hours and at such locations at Makena as it deems necessary to enhance the safety and protection of park beach users. The County shall also provide the State with schedules that show the personnel and the times that lifeguard services will be provided.

The County shall ensure that the Makena is properly and fully equipped with lifeguard towers and necessary equipment and supplies. The County shall determine the number and the placement locations of the lifeguard towers, subject to the concurrence by the State, for optimum surveillance of the ocean waters.

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."

3. **Lifeguard standard requirements.**

a. The County shall make available such qualified lifeguard personnel and lifeguard services as may be necessary to effectively carry out the terms and conditions of this MOA. The lifeguards assigned to provide lifeguard services at a designated state beach shall have the same level of training and certification as is required of other regular employee lifeguards in the County's Water Safety Section, and must have successfully completed the following:

(i) United States Lifesaving Association Class I Ocean Lifeguard Training Program, or equivalent.

(ii) First Responder Training approved by the U.S. Department of Transportation.

(iii) American Heart Association or American Red Cross Certification in Cardiopulmonary Resuscitation (CPR).

b. Performance requirements. All County personnel assigned as lifeguards to a designated state beach must meet the following requirements annually:

(i) Complete a 500 meter pool swim in 10 minutes or less.

(ii) Complete a 1,000 meter beach run followed by a 1,000 meter ocean swim in 25 minutes or less.

(iii) Complete a 400 meter rescue board paddle in the ocean in 4 minutes 30 seconds or less.

(iv) Perform actual or simulated rescue events in surf conditions to demonstrate proficiency with rescueboard, rescuetube, and fins.

4. Reports.

a. The County shall keep, maintain, and make available for review, copy, or inspection by the State the following items:

(i) Records of training, certification, and performance tests of lifeguards assigned to a designated state beach under this agreement.

(ii) Daily lifeguard station logs and incident report forms for the designated state beach.

b. The County shall notify the State by telephone as soon as practical when any incident of serious injury or fatality occurs at a designated state beach during the times such lifeguard services are scheduled for the beach. Thereafter, a written incident report and any investigative reports shall be prepared and forwarded as soon as practical to the State through the State Parks Division, Department of Land and Natural Resources, State of Hawai'i, 54 South High Street, Wailuku, Hawai'i 96793.

c. The County shall also submit to the State, monthly written reports on all other water accidents, emergency responses, and rescue efforts at the designated state beach.

5. Examination of financial records. The County shall permit the State or any of its duly authorized representatives, at all reasonable times and upon reasonable notice, to inspect, audit, and make copies of any and all books, documents, papers, reports, statements, and records (hereinafter referred to as "Financial Records") of the County pertaining to any and all of the County's lifeguard services, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by federal, state or county law.

Financial Records identified above shall include receipts or other purchase documents with descriptions and serial numbers of equipment and vehicles purchased with funds from this MOA. The Financial Records shall be retained for a period of three years after submittal of the then final financial report, except that if any litigation, claim or audit is started before the expiration of the three year period, the Financial Records shall be retained until all litigation, claims or findings have been resolved.

The County shall also furnish from time to time, as requested by the State, all statements, records, papers, and documents showing monies expended and obligated. Furthermore, within sixty (60) days following the expiration of each and every agreement period for which the State has contributed to the financing of lifeguard services under this MOA, a detailed financial statement shall be submitted in writing to the State. The County shall maintain its accounting records in conformity with general accepted accounting principles.

IT IS FURTHER MUTUALLY AGREED by the State and the County as follows:

1. In the event the designated state beach is transferred from the State to the County through the operation of law during the agreement period, the State and the County shall amend this MOA in writing to adjust the scope of services to be provided by the County to the State and the cost to be paid by the State. Such amendment(s) shall be by mutual agreement of the parties.

2. The State shall not be obligated to reimburse the County for, and the County shall not be obligated to incur expenditures in, the performance of all work and services contemplated by this MOA, in excess of the funds paid by the State to the County as provided herein, unless and until such costs and expenses shall have been mutually agreed to by the parties by written amendment to this MOA, which shall be executed by the Chairperson of the Board of Land and Natural Resources and by the Mayor of the County.

3. Payment made by the State to the County under the MOA shall be for labor costs, salaries, materials, supplies, equipment, vehicles and administrative overhead cost incurred by the County in providing the herein lifeguard services.

4. This MOA shall remain in force and effect during the entire agreement period, unless sooner terminated. Either party may terminate this MOA at any time upon giving the other party written notice of its intention to terminate at least thirty (30) days prior thereto.

5. At the termination of this MOA, and upon the State's request, the County will surrender to the State all equipment and vehicles which have been purchased with funding from this MOA. The County will return to the State any funds remaining after lifeguard services provided or purchases made prior to the termination date have been paid for.

6. Any dispute concerning a matter of fact arising under this MOA, which is not resolved by mutual, written agreement within thirty (30) days, shall be decided by the Chairperson of the Board of Land and Natural Resources and by the Mayor of the County, who shall reduce their decision to writing. Pending final decision of a dispute, the County shall proceed diligently with the performance of this MOA in accordance with the State's request.

IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed on this 19th day of July, 2008, and the COUNTY OF MAUI, by its Mayor, has caused the seal of the County of Maui to be hereunto affixed on this 2nd day of July, 2008.

Approved by the Board of Land
and Natural Resources at its
meeting held on November 16, 2007, Item E-3.

APPROVED AS TO FORM:

STATE OF HAWAII


Deputy Attorney General

By 
LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM
AND LEGALITY:

COUNTY OF MAUI

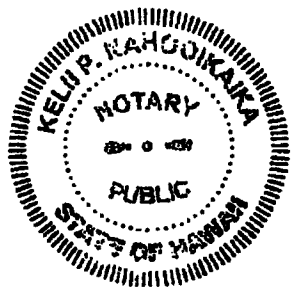

JEFFREY UEOKA
Deputy Corporation Counsel

By 
CHARMAINE TAVARES
Its Mayor

STATE OF HAWAI'I)
) ss.
COUNTY OF MAUI)

On this 3rd day of July, 2008, before me appeared **CHARMAINE TAVARES**, to me personally known, who, being by me duly sworn, did say that She is the **MAYOR** of the **COUNTY OF MAUI**, a political subdivision of the State of Hawai'i; and that the seal affixed to the foregoing instrument is the corporate seal of said political subdivision, and that the foregoing instrument was signed and sealed in behalf of said political subdivision, by authority of the County Council, and said **CHARMAINE TAVARES**, acknowledged said instrument to be the free act and deed of said political subdivision.

Kelli P. Nahoolkaka
Kelli P. Nahoolkaka
Notary Public, State of Hawai'i



My commission expires: 4/30/2010

Attachment 1

PAYMENT

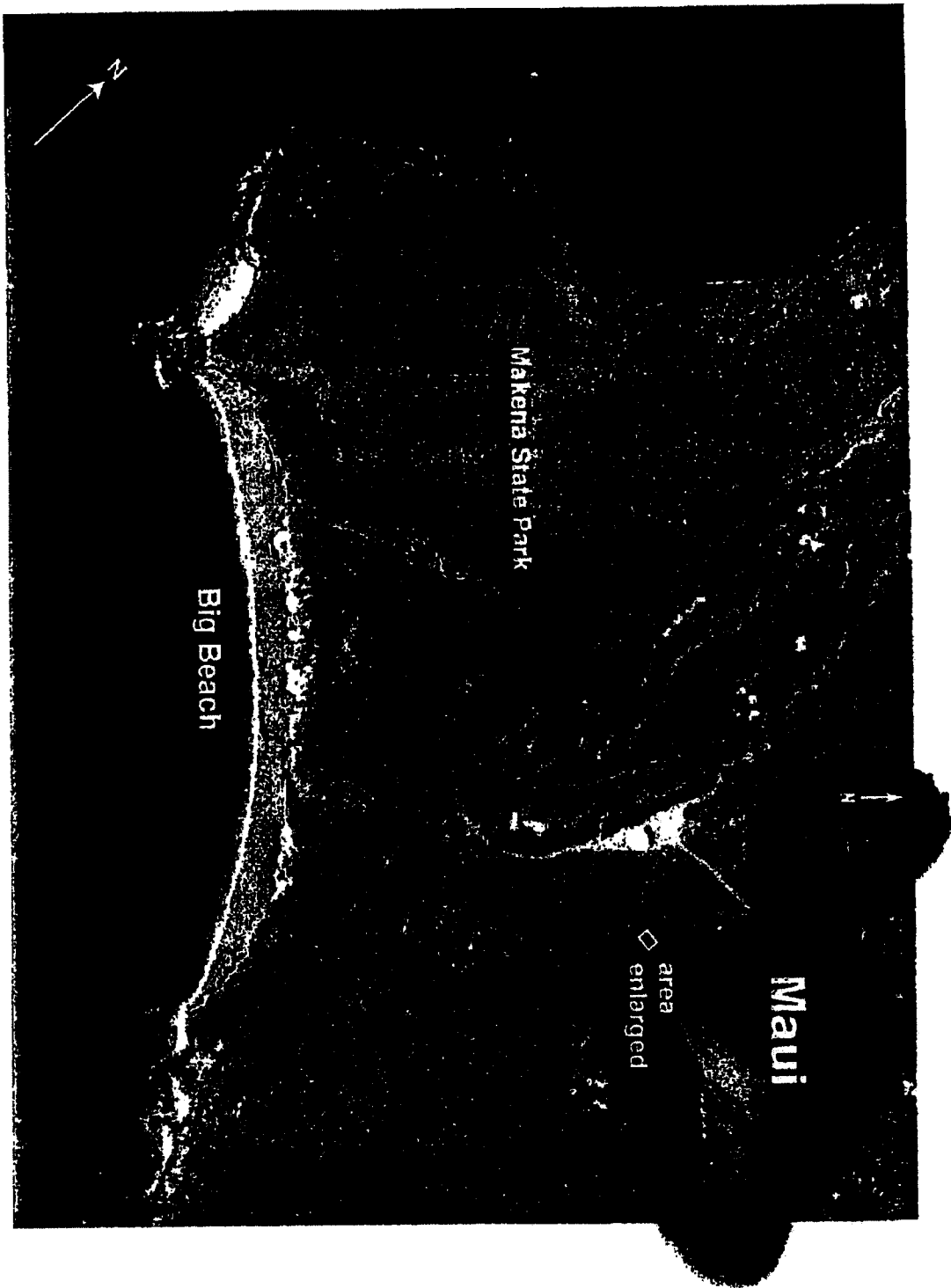
All funds to be paid by the State to the County shall be encumbered on an annual basis, and shall be paid according to the following schedule:

FISCAL YEAR 2007-2008

\$188,258 from Special and General Funds, payable upon receipt of invoice.

FISCAL YEAR 2008-2009

\$406,469 from General Funds in quarterly payments payable in quarterly increments upon receipt of invoice at the beginning of each quarter.



Attachment 2

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

June 17, 2016

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

KEKOA KALUHIWA
FIRST DEPUTY

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

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVICTION
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Fire Chief Jeffery Murray
Maui Fire Department
200 Dairy Road
Kahului, Hawaii 96732

Dear Fire Chief Murray:

The purpose of this letter is to serve as the eighth written amendment to the Memorandum of Agreement for Lifeguard Services (MOA) made and entered into on July 3, 2008, as amended on July 22, 2009, June 28, 2010, June 16, 2011, June 8, 2012, June 7, 2013, May 14, 2014, and June 1, 2015 between the State of Hawaii and the County of Maui for Makena Beach.

We acknowledge that you have requested continuing funding for lifeguard services at Makena Beach State Recreation Area. The available funding for this amendment is limited to \$606,469. We hope you are able to continue to provide lifeguard services at Makena under the following conditions:

1. This amendment will be for lifeguard services at Makena Beach State Recreation Area, Island of Maui, from July 1, 2016 through June 30, 2017, provided that the State may cancel the contract at any time with 30 days written notice.
2. Funds to be transmitted to the County of Maui under this amendment shall total \$606,469 for the year, subject to the availability of funds, but shall be transferred in quarterly increments payable at the beginning of each quarter.
3. Funding under this amendment can be used for Water Safety Officer positions, equipment, services and supplies.
4. In compliance with Section C-5 of the MOA, the County will submit a written detailed financial statement to the State by August 29, 2017 covering the 2016-2017 agreement period.

Fire Chief Murray
MOA, 8th Amendment
Page 2

5. The effective date of this amendment is July 1, 2016.
6. All other terms and conditions of the MOA shall remain unchanged.

Please sign and date below and return the original to us. Your staff may call Mr. Curt A. Cottrell at 587-0290, if there are any questions.

Sincerely,




SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

APPROVED AS TO FORM:


Deputy Attorney General
Office of the Attorney General

Date: 6/24/16

ACKNOWLEDGED:


ALAN M. ARAKAWA
Mayor
County of Maui


Date: 7/15/16

APPROVED AS TO
FORM AND LEGALITY:


Deputy Corporation Counsel
County of Maui

Date: 7/8/16

RECOMMEND APPROVAL:


JEFFERY MURRAY
Fire Chief
Maui Fire Department

Date: 7/12/2016