

REQUEST FOR LEGAL SERVICES

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CORPORATION COUNSEL
2020
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Date: January 23, 2020
From: Michael J. Molina, Chair
Governance, Ethics, and Transparency Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Moana M. Lutey, Esq.

Subject: INTERGOVERNMENTAL AGREEMENT AMENDING THE MEMORANDUM OF AGREEMENT FOR LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI FOR MAKENA BEACH PARK (GET-39)

Background Data: Please revise the proposed bill as reflected in the attached markup, and, if appropriate, approve as to form and legality. A hard copy of the revised proposed bill is requested with your response.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [] OTHER:

| | |
|---|--|
| Requestor's signature  Michael J. Molina | Contact Person Shelly Espeleta (Telephone Extension: 7134) |
|---|--|

☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)
☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): January 29, 2020
REASON: For possible posting on the February 7, 2020 Council agenda.

FOR CORPORATION COUNSEL'S RESPONSE

| | | |
|-----------------------------|---------------------------------|----------------|
| ASSIGNED TO: <u>ESK JMO</u> | ASSIGNMENT NO. <u>2019-0065</u> | BY: <u>JED</u> |
|-----------------------------|---------------------------------|----------------|

TO REQUESTOR: ☒ [X] 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 1/23/20

By 

(Rev. 7/03)

get:ltr:039acc01:ske

Attachment

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR
TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
AMENDING THE MEMORANDUM OF AGREEMENT FOR
LIFEGUARD SERVICES BETWEEN THE STATE OF HAWAII AND THE
COUNTY OF MAUI FOR MAKENA BEACH PARK

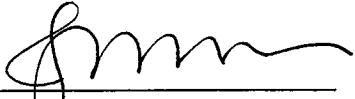
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Purpose. On July 3, 2008, the State of Hawaii and the County of Maui entered into a Memorandum of Agreement for the County to provide lifeguard services at Makena Beach Park. The State of Hawaii and the County of Maui have amended this Agreement over the years to continue the practice of providing County lifeguard services at Makena Beach Park. The protections afforded by Act 170, Sessions Laws of Hawaii 2002, as amended, were repealed on June 30, 2017. The removal of these protections affects a significant section of the original Agreement, and therefore the proposed Amendment to the Memorandum of Agreement, attached as Exhibit "1," has the potential to place a financial obligation on the County. In accordance with Section 2.20.020, Maui County Code, unless authorized by ordinance, the Mayor must not enter into any intergovernmental agreement or any amendment that places a financial obligation upon the County or any department or agency.

SECTION 2. Authorization. The Council authorizes the Mayor or his authorized representative to execute the Amendment to the Memorandum of Agreement, and any further amendments.

SECTION 3. Effective date. This ordinance will take effect on approval.

APPROVED AS TO FORM
AND LEGALITY:

A handwritten signature in black ink, appearing to read 'J. Oana', written over a horizontal line.

JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

LF 2019-0065, 2019-1479 (2015-4654)
GET-39 2020-01-23 Ordinance MOA 13th Amendment

DAVID Y. IGE
GOVERNOR OF
HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

August 6, 2019

Fire Chief David C. Thyne
County of Maui
200 Dairy Road
Kahului, Hawai'i 96732

Dear Fire Chief Thyne:

The purpose of this letter is to serve as the thirteenth 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, June 1, 2015, June 17, 2016, August 22, 2017, October 5, 2017, March 23, 2018, and June 10, 2019 between the State of Hawai'i and the County of Maui for Makena Beach, Makena State Park.

The available funding is limited to \$1,056,059 for this amendment. Division of State Parks understands you can 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, 2019 through June 30, 2020, provided that the State may cancel the contract at any time with 30 days written notice.
2. Funding under this amendment can be used solely for Water Safety Officer positions until further discussion and concurrence.
3. The effective date of this amendment is July 1, 2019.
4. Funds to be transmitted to the County of Maui under this amendment shall total \$1,056,059 for the year, subject to availability of funds, but shall be transferred in quarterly increments.
5. The County will submit a quarterly financial statement with the quarterly invoice indicating the staffing paid under the invoice for the quarter.

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

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT

ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAROLAE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

2019 OCT -1 11:12:40
COMMUNICATIONS SECTION

EXHIBIT " 1 "

6. All other terms and conditions of the MOA shall remain unchanged with the exception of Section C. The following language is deleted:

In accordance with Act 170, Session Laws of Hawaii 2002, as amended by Act 152, Session Laws of Hawaii 2007, and Act 81, Session Laws of Hawaii 2009, "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."

Please sign and date below and return the original to us. If there are any questions, contact Mr. Curt A. Cottrell at (808) 587-0290.

Sincerely,



SUZANNE D. CASE

Chairperson

Board of Land and Natural Resources

APPROVED AS TO FORM:


DEPUTY ATTORNEY GENERAL
Office of the Attorney General

Date Aug. 15, 2019

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

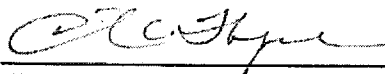
Date _____

ACKNOWLEDGED:
COUNTY OF MAUI

By _____
Michael P. Victorino, Mayor
County of Maui

Date _____

ACKNOWLEDGED:
COUNTY OF MAUI

By 
David C. Thyne, Fire Chief
Maui Fire Department
County of Maui

Date Sept. 3, 2019