

**COUNCIL OF THE COUNTY OF MAUI**  
**HEALTHY FAMILIES AND**  
**COMMUNITIES COMMITTEE**

October 9, 2020

**Committee**  
**Report No.** 20-125

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Healthy Families and Communities Committee, having met on May 13, 2019, March 17, 2020, March 20, 2020, March 24, 2020, June 18, 2020, and September 24, 2020, makes reference to County Communication 19-197, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "AUTHORIZING THE ISSUANCE OF A PERMIT WITH GREATER DURATION THAN FIVE CONSECUTIVE DAYS FOR USE OF THE WAR MEMORIAL COMPLEX FOR THE 2019 MAUI AGRICULTURAL FESTIVAL AND 4-H LIVESTOCK FAIR PURSUANT TO SECTION 13.04A.100(D), MAUI COUNTY CODE."

The purpose of the proposed resolution is to authorize the issuance of a permit with greater duration than five consecutive days for use of the War Memorial Complex in Wailuku, Maui, Hawaii, for the 2019 Maui Agricultural Festival and 4-H Livestock Fair in accordance with Section 13.04A.100(D), Maui County Code.

By correspondence dated March 11, 2020, the Director of Parks and Recreation transmitted a proposed resolution entitled "AUTHORIZING THE PROPOSED MAUI AGFEST & 4-H LIVESTOCK FAIR LICENSE AGREEMENT, PURSUANT TO SECTION 13.04A.100, MAUI COUNTY CODE." The purpose of the proposed resolution is to authorize the use of the War Memorial Complex special events arena, baseball fields, gymnasium, and stadium parking lot for the proposed Maui AgFest & 4-H Livestock Fair, for the period 2020 through 2025, and to authorize the license period to extend in excess of five consecutive days per event.

By correspondence dated September 17, 2020, the Department of the Corporation Counsel transmitted a revised proposed resolution

**COUNCIL OF THE COUNTY OF MAUI**  
**HEALTHY FAMILIES AND**  
**COMMUNITIES COMMITTEE**

Page 2

**Committee**  
**Report No. 20-125**

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entitled "AUTHORIZING THE PROPOSED MAUI AGFEST & 4-H LIVESTOCK FAIR LICENSE AGREEMENT, IN ACCORDANCE WITH SECTION 13.04A.100, MAUI COUNTY CODE." The purpose of the revised proposed resolution is to authorize the use of the War Memorial Complex special events arena, baseball fields, gymnasium, and stadium parking lot for the proposed Maui AgFest & 4-H Livestock Fair, for the period 2021 through 2025, and to authorize the license period to extend in excess of five consecutive days per event.

Your Committee notes Section 13.04A.100(D), Maui County Code, requires Council approval for permits to use parks facilities for more than five consecutive days.

Your Committee further notes the permit referenced in the proposed resolution transmitted by County Communication 19-197 was approved by Resolution 19-97 on May 17, 2019.

The Department of Parks and Recreation informed your Committee the 2020 Maui AgFest & 4-H Livestock Fair was canceled because of the COVID-19 pandemic. Therefore, your Committee deliberated on the revised proposed resolution entitled "AUTHORIZING THE PROPOSED MAUI AGFEST & 4-H LIVESTOCK FAIR LICENSE AGREEMENT, IN ACCORDANCE WITH SECTION 13.04A.100, MAUI COUNTY CODE," transmitted by correspondence dated September 17, 2020, from the Department of the Corporation Counsel, to approve a permit for 2021-2025.

The Department advised your Committee the 2021-2025 event dates would not conflict with other planned events at the War Memorial Complex. The Department explained the annual setup for the event will not begin until the Tuesday following the busy Memorial Day Weekend.

Your Committee discussed the importance of developing the agricultural sector and increasing food security in Maui County in light of the economic adjustments necessitated by the ongoing pandemic. A

**COUNCIL OF THE COUNTY OF MAUI**  
**HEALTHY FAMILIES AND**  
**COMMUNITIES COMMITTEE**

Page 3

**Committee**  
**Report No.** 20-125

representative from 4-H explained that they are planning for an in-person event in 2021, but they are making backup plans to secure an online platform to host some activities.

Representatives from the AgFest and 4-H stated the five-year license agreement would provide stability and allow them to spend more of their time on making the event bigger and better going forward.

Your Committee expressed its support for raising awareness and educating the community about Maui County's agriculture industry and voted to recommend passage of the revised proposed resolution.

Your Committee voted 7-0 to recommend adoption of the revised proposed resolution and filing of the communication. Committee Chair Hokama, Vice-Chair Sugimura, and members Kama, King, Molina, Paltin, and Rawlins-Fernandez voted "aye."

Your Healthy Families and Communities Committee  
RECOMMENDS the following:

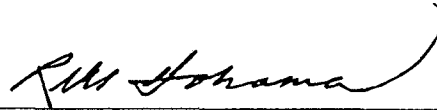
1. That Resolution 20-149, as revised herein and attached hereto, entitled "AUTHORIZING THE PROPOSED MAUI AGFEST & 4-H LIVESTOCK FAIR LICENSE AGREEMENT, IN ACCORDANCE WITH SECTION 13.04A.100, MAUI COUNTY CODE," be ADOPTED; and
2. That County Communication 19-197 be FILED.

COUNCIL OF THE COUNTY OF MAUI  
**HEALTHY FAMILIES AND  
COMMUNITIES COMMITTEE**

Page 4

**Committee**  
**Report No.** 20-125

This report is submitted in accordance with Rule 8 of the Rules of the Council.

A handwritten signature in black ink, appearing to read "Riki Hokama", is written over a horizontal line.

RIKI HOKAMA, Chair

hfc:cr:20019aa:lpcm

# Resolution

No. \_\_\_\_\_

AUTHORIZING THE PROPOSED MAUI AGFEST & 4-H LIVESTOCK FAIR  
LICENSE AGREEMENT, IN ACCORDANCE WITH SECTION 13.04A.100,  
MAUI COUNTY CODE

WHEREAS, the County of Maui and Maui County Farm Bureau desire to continue the annual Maui AgFest & 4-H Livestock Fair at the War Memorial Complex's special events arena, baseball fields, gymnasium, and stadium parking lot and have negotiated a proposed License Agreement for 2021 through 2025, attached as Exhibit "1"; and

WHEREAS, the festival period is one day each year, but the setup and takedown for the festival causes the license period to extend in excess of five days per event; and

WHEREAS, in accordance with Section 13.04A.100, Maui County Code, a permit to use a park or recreational facility may not exceed five consecutive days unless authorized by the Council by resolution; now, therefore,

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

1. That it approves the issuance of a permit to the Maui County Farm Bureau for the Maui AgFest & 4-H Livestock Fair for 2021 through 2025 License Agreement, in accordance with Section 13.04A.100, Maui County Code, and the terms and conditions of the proposed License Agreement attached as Exhibit "1";
2. That it authorizes the Mayor, or the Mayor's duly authorized representative, to execute the License Agreement; and
3. That certified copies of this Resolution be transmitted to the Mayor; the Director of Parks and Recreation; the Director of Finance; the Director of the Office of Economic Development; and the Maui County Farm Bureau.

**Resolution No. \_\_\_\_\_**

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

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Deputy Corporation Counsel  
County of Maui

hfc:misc:019areso01:lcjm

## MAUI AGFEST & 4-H LIVESTOCK FAIR LICENSE AGREEMENT

This License Agreement ("Agreement") made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2020 by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("Licensor") and the MAUI COUNTY FARM BUREAU, a Hawaii nonprofit corporation, whose mailing address is Post Office Box 148, Kula, Maui, Hawaii 96790, hereinafter collectively referred to as the "Parties".

### WITNESSETH:

By this Agreement, Licensor grants a license to Licensee allowing Licensee to enter and use the Premises, as defined herein, for the specific and limited purpose, and during the time periods stated herein. This license grants Licensee the privilege to use the Premises for the particular purpose set forth herein. This license cannot be extended to purposes other than the specific and limited purpose stated herein without amendment of this Agreement. If the Licensee exceeds the scope of the license, Licensor may treat the Licensee as a trespasser. This license does not convey to Licensee any interest in the land of Licensor and shall not be construed as an easement or a lease. Licensee holds no estate in the Premises. At all times hereunder, Licensor retains legal possession of the Premises, and Licensee has only the privilege to enter for the particular purpose stated herein. Except as otherwise provided for herein, Licensor shall retain ownership of all permanent improvements of whatever kind or nature located on or about the Premises, including all improvements that may be made during the term of, or pursuant to, this Agreement, unless otherwise agreed to by the Parties prior to making any such improvements. This license does not convey exclusive possession of the Premises to Licensee except to the extent necessary to carry out the purpose of this license. Licensor reserves unto itself, its successors and assigns the full use of and enjoyment of the Premises and the right to grant to others rights and privileges for any all purposes affecting the Premises, except to the extent that there is a conflict with or frustration of the purpose of this license.

### FURTHER WITNESSETH:

Licensor, for and in consideration of the fact that the Activities (as hereinafter defined) may have a significant economic impact on Maui County, and other good and valuable consideration, does hereby grant to Licensee this License Agreement and Licensee does hereby accept said License Agreement on the terms and conditions set forth below:

1. **Premises.** The Premises licensed to Licensees under this Agreement shall be limited to a portion of the area known as the War Memorial Complex, identified as Tax Map Key No. (2)3-8-007:055, to include the Special Events Arena, War Memorial Little League Fields 4 and 5, War Memorial Gym Parking Lot, War Memorial Stadium Parking Lot and the parking area of the Keopuolani Regional Park, identified as Tax Map Key No. (2)3-8-007:001, as shown on Exhibit "A", attached hereto and by reference incorporated herein. The Premises shall not include the Coach Sakamoto Pool or the Tennis Courts. In the event any of the areas within the Premises are not available, Licensee will be given written notification by Licensors within 120 days of Activity.
2. **Term.** This Agreement shall become effective upon execution and shall expire December 31, 2025, unless terminated sooner as provided herein.
3. **Activity.** Licensee intends to coordinate and hold the annual Maui AgFest & 4-H Livestock Fair ("Activity") on the Premises.
4. **Use of Premises.**
  - a. The Activity shall be held the Saturday following Memorial Day each year, specifically June 5, 2021, June 4, 2022, June 3, 2023, June 1, 2024, and May 31, 2025. Licensee shall inform County of exact dates on or before December 31<sup>st</sup> of the year immediately preceding the event. The Activity shall not interfere with annual events held at the complex, such as graduations. Licensors must approve of the submitted date of Activity.
  - b. Activity Set-up Period. Licensee may begin Activity Set-up beginning on the Tuesday of the week of the event each year, specifically June 1, 2021, May 31, 2022, May 30, 2023, May 28, 2024, and May 27, 2025. Licensee shall coordinate with the Director of the Department of Parks and Recreation ("Director") or the Director's authorized representative, regarding the Activity Set-up.
  - c. Activity Take-down Period. Licensee may begin Activity Take-down after the event is completed, and shall complete all Take-down no later than the end of business on the Tuesday immediately following the Activity, specifically June 8, 2021, June 7, 2022, June 6, 2023, June 4, 2024, and June 3, 2025.
  - d. Maui AgFest 4-H Livestock Fair Trailer or Tent Licensee may set-up a trailer or tent for the duration of the Activity period to serve as Licensee's office and holding area for supplies and equipment on the Premises in Licensors approved area. Plan indicating proposed location shall be submitted to the department on or before the 15<sup>th</sup> of March each year.
  - e. The Premises shall be open to the general public during the periods that the Activity is not being conducted. Licensee may restrict access to certain designated areas for safety and/or security reasons, subject to approval by the Director.

- f. Director shall have the authority to exercise his/her reasonable discretion to designate the locations where equipment and/or material may be stored by Licensee during the Activity Set-up and Take-down periods. There shall be no storage on the Premises outside of the Activity Set-up and Take-down periods.
  - g. Licensee shall comply with §13.04A.070, Maui County Code, and shall use best efforts to ensure compliance of attendees of the Activities with such ordinance.
  - h. No risk, liability, or responsibility for any loss or damage to Licensee's property is assumed by Licenser, and Licensee shall not make any claim, either in law or in equity, for any loss or damage incurred, unless caused by the negligence or willful misconduct of Licenser or its employees or agents.
  - i. Licensee agrees to accept and assume all reasonable risks with respect to entry upon the Premises and the conditions thereof, including without limitation any latent or patent conditions. Licenser represents and warrants that, as of the effective date of this Agreement, it is not aware of any latent or patent conditions at the Premises which would interfere with the Activities or other terms and provisions of this Agreement. To the extent that, after the effective date of this Agreement, Licenser becomes aware of any latent or patent conditions at the Premises which would interfere with the Activities or other terms and provisions of this Agreement, Licenser shall promptly notify Licensee of such conditions.
  - j. Licensee shall maintain the Premises and any improvements thereof in the condition in which they existed prior to Licensee's occupancy of the Premises, normal wear and tear excepted. Licensee shall pay to Licenser the actual reasonable cost of repairs or replacements for any and all damages caused by the Activities within thirty (30) calendar days after notification of the cost of such repairs or replacements.
5. **Use of Department Equipment.** Licensee, subject to approval by the Director, shall be permitted to use Department Equipment if available, as defined in the Annual Budget Ordinance.
6. **Submission of Event Details.** Licensee shall submit to the Director, the Grounds Preparation Schedule, an outline of the Impacts on Parks Facilities and Services, the Site Plans, Security Plans, Parking Plans, Trash and Litter Plans, Restroom/Comfort Station Plans, and any additional information required by the Director (hereinafter collectively referred to as "Event Details"), on or before the 1<sup>st</sup> of April each year. The Director shall notify Licensee of any additional information being required on or before the 15<sup>th</sup> of March each year. Failure to submit the Event Details in a timely manner may result in the termination of this Agreement and/or cancellation of the Activity for the year.

7. **Review by Department.** The Director or the Director's authorized representative shall review the Event Details and shall respond to Licensee within ten (10) business days of receipt of the Event Details. The Director's response shall be either approval or a request for modification. Licensee shall have ten (10) business days to comply with any request for modification, failure to comply in a timely manner may result in the termination of this Agreement and/or cancellation of the Activity for the year.
8. **Staffing.** Licensee shall be responsible for providing adequate staffing necessary to conduct the Activity on the Premises, including, but not limited to, emergency medical services personnel, security personnel, traffic control personnel, repair and maintenance personnel, and cleaning personnel. The total number of necessary personnel required each year shall be set forth in the Event Details.
9. **Fees.** The annual use fee for the Premises shall be based on the current rates and fees at the Co-Sponsored rate as defined in the Annual Budget Ordinance. Licensee shall submit the annual use fee to Licensor's Department of Parks and Recreation ("Parks") at the time that Licensee submits the Event Details for review.
10. **Security Deposit.** Licensee shall deposit a Security Deposit with Parks to cover any damages including, but not limited to, property damage, any cost of cleanup not performed by Licensee, and any costs associated with any keys lost or not returned to Licensor, based on the current fees and deposits at the Co-Sponsored rate as defined in the Annual Budget Ordinance. In the event that the Security Deposit is insufficient to cover the costs to cover any damages, caused or associated with Licensee's use of the Premises, the Licensee shall be responsible for any costs beyond the deposit collected. Upon completion of the Activity, the Director or the Director's authorized representative shall conduct an inspection with Licensee to review the condition of the Premises, and if there are no damages, Licensor shall return the Security Deposit to Licensee.
11. **Required Permits.** In the event that any Permits are required by law, Licensee shall submit proof to Parks that Licensee has obtained said permits, at least ten (10) business days prior to the Activity. Failure to submit proof of the permits in a timely fashion may result in the termination of this Agreement and/or cancellation of the Activity for the year.
12. **Acceptance of Premises.** Licensee accepts the Premises in an "AS IS" condition and acknowledges that Licensor has made no representations concerning the condition of the Premises or suitability for any use intended to be made thereof.

13. **Assumption of Risk.** Licensee, as a material part of the consideration of Licensors for this Agreement, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any accident, fire or nuisance made or suffered on the Premises or any surrounding areas, associated with Licensee's use of the Premises and any surrounding areas, and hereby waives any and all claims against the Licensors. No risk, liability, or responsibility for any loss or damage to Licensee's property is assumed by Licensors and Licensee shall not make any claim, either in law or in equity, for any loss or damage incurred, unless caused by the gross negligence or willful misconduct of Licensors, its employees, or agents.
14. **Indemnification.** Licensee shall indemnify, defend, and hold harmless Licensors, its officers, employees, and agents from and against any and all claims for bodily injury, wrongful death and/or property damage by any persons caused by, occasioned by, arising from, or resulting from this Agreement and/or entry upon the Premises by Licensee, any spectators, guests, and anyone claiming under Licensee.
15. **Insurance.** Licensee shall obtain, pay for, and keep in force throughout the period of this Agreement comprehensive liability insurance issued by an insurance company (the "Carrier") authorized to do business in the State of Hawaii (an "Admitted Carrier"), or by a company not authorized to do business in the State of Hawaii (a "Non-Admitted Carrier") only through a general insurance agent or broker licensed in the State of Hawaii. The Carrier shall be rated no less than "A-" as established by "AM Best" or "Standard and Poor" ratings.

The insurance policy, as evidenced by issuance of a "Policy Endorsement", shall name Licensors and its officer, employees and agents as "Additional Named Insured", and shall include a duty to defend Licensors, the State of Hawaii and their respective officers, employees and agents against any loss, liability, claims, and demands for injury or damage, including but limited to, claims for property damage, personal injury, or wrongful death, arising out of, or in connection with Licensee's actions and/or use of Premises.

Unless otherwise agreed to through the joint decision and discretion of the Director of the Department of Finance and the Director, the insurance policy shall contain the following minimum requirements:

- 1) No less than a Combined Single Limit ("CSL") of liability coverage of \$2,000,000.
- 2) No erosion of limit by payment of defense costs; and

3) Minimum annual aggregate limit of \$2,000,000.

Prior to or upon the execution of this Agreement, Licensees shall furnish the Licensors with a copy of the insurance policy certificate together with the required endorsements verifying such insurance coverage. If the scheduled expiration date of a current insurance policy is sooner than the specified termination date of this Agreement, the Licensees shall, upon renewal of the insurance policy, provide Licensors with a copy of the renewed insurance policy certificate together with the required endorsements.

The insurance policy shall expressly state that in the event that the policy is canceled or terminated prior to the expiration date, notice of said cancellation or termination shall be delivered to Licensors.

If at any time, and from time to time, a higher limit or other requirements shall be deemed appropriate, customary, or necessary, in the reasonable discretion of the Director, Licensee shall obtain and maintain such coverage.

Licensee shall be required to submit evidence that each entity, including, but not limited to, vendors, exhibitors, contractors, and Activity participants, is properly insured.

16. **Condition of Premises.** Licensee shall be responsible for any damages, beyond ordinary wear, to the Premises caused by Licensee's use of the Premises, including any damages caused by any spectator, attendee, or participant of the Activity. Licensee shall complete any necessary repairs within ten (10) days of receipt of the notice of damages to the Parks Department approved standards. If the damages are the type that cannot be properly repaired within ten (10) days, said determination shall be in the Director's sole and absolute discretion. Licensee shall immediately commence repairs and diligently work to repair all damages, the period for completion of necessary repairs shall be extended until such time that repairs are completed to the reasonable satisfaction of the Director. If Licensee fails to repair the damages within ten (10) days and the damages are the type that could be properly repaired within ten (10) days, Licensors may utilize the Security Deposit to pay for any repairs and assess any additional cost to Licensee.
17. **Rules and Regulations.** Licensors accept and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Licensee's use of the Premises, which rules and regulations shall be binding upon Licensees upon notice thereof to Licensee. For enforcement of such rules and regulations, if any,

Licensor shall have all remedies in this Agreement and any other remedies allowed by law.

18. **Hazardous Materials.** Licensee shall not use, generate manufacture, treat, handle, refine, produce, store, discharge, release, dispose of or allow to exist on or about the Premises, any hazardous material, except in full compliance with applicable federal, state, and county laws and with the prior written consent of Licensor. Licensee shall not be responsible for any hazardous materials existing at the Premises prior to the time Licensee accessed the Premises.
19. **Walk-Through.** The Parties shall conduct a "Walk-Through" inspection of the Premises prior to each year's Activity. The Parties shall memorialize the details of the inspection noting the condition of the Premises in a memorandum.
20. **Post Event Meeting.** Within twenty (20) business days of the conclusion of the Activity, the Parties shall hold a meeting to discuss the Activity and any issues or concerns that either Party had in regards to the Activity.
21. **Notices and Communications.** All notices and written communications shall be sent to the following:

To Licensee:

MAUI COUNTY FARM BUREAU  
P.O. Box 148  
Kula, Hawaii 96790

To Licensor:

Director  
County of Maui, Department of Parks and Recreation  
700 Halia Nakoa Street  
Wailuku, Hawaii 96793

22. **Interpretation Under Hawaii Law.** This Agreement is made and entered into in the State of Hawaii, and shall in all respects be interpreted, enforced and governed under the laws of the State of Hawaii.
23. **Assistance of Legal Counsel.** The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of and effects of this Agreement, and have thoroughly discussed all aspects of this Agreement with their respective counsel; that they are voluntarily entering into this Agreement; and that no Party or its agents, representatives or attorneys have made any representations concerning the terms or effects of this Agreement other than those contained herein.

24. **Complete Agreement.** This Agreement represents the entire agreement between the Parties and supersedes all prior or contemporaneous agreements. The Parties mutually agree that neither has made any representation with respect to the subject matter of this Agreement, except such representations as are specifically set forth herein, and each Party acknowledges that the Party has relied on the Party's own judgments in entering into this Agreement.
25. **Cancellation or Interruption of Activities.** Licensor reserves the right, in its sole and absolute discretion, reasonably exercised, to interrupt or cancel any activities, before or during the performance thereof in the interest of public safety. In the event that Licensor exercises this right, Licensees shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against Licensor, provided that Licensor shall make its reasonable best efforts to allow for the resumption and continuation of the activities as soon as reasonably possible.
26. **Premises Deemed Unfit.** If due to unforeseen circumstances, the Premises are deemed unfit for any activities by either of the Parties after the execution of this Agreement, Licensee shall hold Licensor harmless from any economic losses and damages resulting from business interruption due to the inability to use the Premises. If at all reasonably possible, the Parties shall cooperate and put forth a collective effort to return the Premises to conditions deemed fit for activities.
27. **Assignment.** Licensee shall not assign this Agreement or any of its rights or obligation hereunder without the prior written consent of Licensor.
28. **Excuse of Performance.** The Parties shall be excused from performance of this Agreement, in whole or in part, only for the following causes, to the extent the cause was not (I) reasonably foreseeable and (II) within the reasonable control of the Party claiming excused performance:
- a. When performance is prevented by the operation of law;
  - b. When performance is prevented by an act of the public enemies, or by strike, lockout, Acts of God, acts of government in either its sovereign or contractual capacity, condemnation or eminent domain proceedings, affecting the Premises, terrorism, floods, epidemics, quarantine restrictions, fire, delay in transportation, extreme storms, or unavoidable casualty.

29. **Breach.** If Licenser determines that any term or condition contained herein has been breached, and Licensee fail to immediately and diligently correct such breach, or if such breach continues uncorrected for a period of twenty-four (24) hours or more following receipt of written notice thereof to the Maui County Farm Bureau or the designee, Licenser shall have the right to cancel and revoke this Agreement. Notice hereunder may be given verbally to the President of the Maui County Farm Bureau designee, provided that Licenser shall immediately follow up any verbal notice with a written notice to Licensee within forty-eight (48) hours.
30. **No Waste or Liens.** Licensee will not commit or suffer any waste, or any act or neglect whereby the Premises, or any improvements thereon, shall at any time during the term hereof become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"). If any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Licensee shall bond against or discharge the same within ten (10) days after written request by Licenser.
31. **Compliance with Laws.** Licensee will at all times during the term hereof observe, perform, and comply with all laws, ordinances, rules and regulations, now or hereafter made by any governmental authority, applicable to Licensee's use of the Premises and any improvements thereon, under this Agreement.
32. **Waiver or Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation contained in the Agreement shall be valid unless in writing and duly executed by the Parties. No evidence of any wavier or modification shall be offered or received in evidence in any proceeding, arbitration or litigation between the Parties arising out of, or affecting the rights or obligations of, the Parties to this Agreement, unless such waiver or modification is in writing and duly executed by the Parties. The Parties further agree that the provisions of this Section may not be waived except as set forth above.
33. **Termination.** Either party may unilaterally terminate this Agreement, with or without cause, at any time prior to expiration of the Agreement upon thirty (30) days prior, written notice to the other party.
34. **Removal of Personal Property.** Any vehicles, equipment, materials, supplies, or other personal property upon the Premises used by Licensee or claimed by Licensee shall be promptly removed upon the end of Activity period. Failure by Licensee to remove personal property will result in forfeiture of the property to Licenser, and Licenser may dispose of the property as it sees fit.
35. **General Terms.** The terms "Licensee" and "Licenser", wherever used herein, and any pronouns used in place thereof, shall mean and include the singular and the plural, as the case may be, and the use of any gender shall man and

include all genders. Notwithstanding any other provision contained herein to the contrary, the term "Licensee" shall be deemed to include, where applicable, all participants, and anyone claiming under the Licensee.

36. **Successors.** This Agreement, and covenants, obligations, rights, and benefits contained herein, shall be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. All covenants and obligations undertaken by two or more persons shall be deemed to be joint and several.
37. **Invalid Provisions.** If any term, covenant, condition, or provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement not affected thereby shall be valid and enforceable.
38. **Counterparts.** The parties hereto agree that this instrument maybe executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Agreement, binding all the parties hereto, notwithstanding all of the parties are not signatory to the original or the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.
39. **No Party Deemed Drafter.**
  - a. All provisions of this Agreement have been negotiated by the Parties at "arm's length" and with full representation of effective legal counsel and the parties agree that neither Party shall be deemed the drafter of this Agreement and further that in the event that this Agreement shall ever be construed by a court of law, such court shall not construe this Agreement or any provision of this Agreement against either Party as the drafter of this Agreement.
  - b. The Parties intend that this Agreement shall be construed according to the rules of construction generally applicable to contracts negotiated by sophisticated parties who are represented by legal counsel.
40. **Captions.** The captions of the paragraphs of this Agreement are solely for convenience and shall not be deemed a part of this Agreement for the purpose of construing the meaning thereof nor as a limitation on the scope of the particular paragraphs to which they refer.
41. **Construction of Language.** In construing the meaning and intent of this Agreement:
  - a. Words and phrases, including defined terms, using the singular number shall include the plural and using the plural number shall include the singular, unless the context clearly indicates the contrary.

b. Words used in any particular gender shall be deemed to include any other gender and words used in the present tense shall include the future tense unless the context clearly indicates to the contrary.

c. Words "hereunder," "hereby," "herein," "hereof," and the like shall mean and refer to this Agreement as a whole and not merely to the specific paragraph or clause in which the respective word appears.

d. The enumeration of specific matters in a general statement shall not be construed to limit the generality of the statement to matters similar to those specific in the words "includes," "including," and "such as" shall be construed as followed by the phrase "without being limited to."

A provision that a Party "shall" or "shall not" do, cause or permit something shall be deemed to mean that such Party so covenants.

This Agreement shall be deemed to include all of the exhibits, schedules, riders and addenda annexed hereto, or referred to herein.

The term Licensor wherever used herein shall mean and include the undersigned Licensor and its Departments, Agencies, Officers, Directors, Employees, Agents, Representatives, Successors, permitted assigns, affiliated entities and devisees.

The term Licensee wherever used herein shall mean and include the undersigned Licensee and its officers, employees, agents, representatives, successors, permitted

42. **County Resolution.** Final approval of this Agreement shall be subject to authorization by council resolution, pursuant to Maui County Code §13.04A.100(D).

**[EXECUTION PAGES TO FOLLOW]**

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IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their duly authorized officers as of the day and year first herein above written.

LICENSOR:  
COUNTY OF MAUI

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Michael P. Victorino  
Its Mayor

Approval Recommended:

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Karla H. Peters, Director  
Department of Parks and Recreation

Approval Recommended:

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Kay Fukumoto, Director  
Office of Economic Development

LICENSEE.

MAUI COUNTY FARM BUREAU,

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Warren Watanabe  
President

Approved as to Form and Legality:

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Deputy Corporation Counsel  
(LF 2020-0283)  
2020-03-06 License

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared **MICHAEL P. VICTORINO**, 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, in the capacity shown, having been duly authorized to execute such instrument in such capacity, 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 in behalf of said County of Maui by authority of its Charter, and the said **MICHAEL P. VICTORINO** 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.

[Stamp or Seal]

Notary Public, State of \_\_\_\_\_

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

<b>NOTARY PUBLIC CERTIFICATION</b>	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	[Stamp or Seal]
Date: _____	

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared **WARREN WATANABE** 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.

[Stamp or Seal]

\_\_\_\_\_  
Notary Public, State of Hawaii

Print Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	[Stamp or Seal]
Date: _____	

