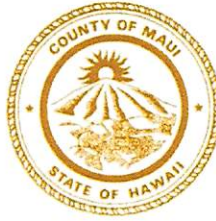


MICHAEL P. VICTORINO
Mayor

DAVID C. THYNE
Fire Chief

BRADFORD K. VENTURA
Deputy Fire Chief



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2020 NOV 25 PM 2:50
OFFICE OF THE MAYOR

DEPARTMENT OF FIRE & PUBLIC SAFETY

COUNTY OF MAUI
200 DAIRY ROAD
KAHULUI, HI 96732

November 24, 2020

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

APPROVED FOR TRANSMITTAL



Mayor Date

RECEIVED
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OFFICE OF THE
COUNTY CLERK

For Transmittal to:

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

Dear Chair Lee and Members:

**SUBJECT: AUTHORIZING THE COUNTY TO ENTER INTO AN
AMENDMENT AND RESTATEMENT OF THE AGREEMENT
REGARDING THE PLACEMENT AND MAINTENANCE OF
RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

The Department of Fire & Public Safety respectfully submits the enclosed proposed resolution to authorize the County of Maui to enter into an agreement regarding the placement of rescue tubes at Maui County Beach Parks.

Thank you for your attention in this matter. If you have any questions, please feel free to call my office at (808) 270-7561.

Sincerely,



DAVID C. THYNE
Fire Chief

COUNTY COMMUNICATION NO. 20-591

Resolution

No. _____

**AUTHORIZING THE COUNTY TO ENTER INTO AN AMENDMENT AND
RESTATEMENT OF THE AGREEMENT REGARDING THE PLACEMENT AND
MAINTENANCE OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

WHEREAS, on April 26, 2017, the Rotary Club of Kihei Wailea (“RCKW”) and the County of Maui entered into an Agreement Regarding the Placement and Maintenance of Rescue Tubes at Maui County Beach Parks (the “Agreement”), which was approved by the Council of the County of Maui pursuant to Resolution No. 17-17; and

WHEREAS, the Agreement is set to expire on December 31, 2020; and

WHEREAS, RCKR desires to extend the Agreement and continue to place and maintain Rescue Tubes at certain County beach parks; and

WHEREAS, the County of Maui sees the potential benefit of Rescue Tubes being placed at County beach parks; and

WHEREAS, the details of the arrangement are set forth in the Amendment and Restatement of the Agreement Regarding the Placement and Maintenance of Rescue Tubes at Maui County Beach Parks, attached hereto and incorporated herein as Exhibit “1”; and

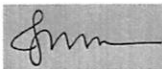
WHEREAS, Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, authorizes the Council to act by resolution; now, therefore,

Resolution No. _____

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

1. That it hereby expresses its appreciation for the Rotary Club of Kihei Wailea's willingness to undertake the placement and maintenance of rescue tubes at certain County beach parks; and
2. That it authorizes the Mayor, or the Mayor's authorized representative, to execute any documents related to the fulfillment of the intent of this resolution; and
3. That certified copies of this resolution be transmitted to the Mayor, the Fire Chief, the Director of Parks and Recreation, and the Rotary Club of Kihei Wailea.

APPROVED AS TO FORM AND LEGALITY:



2020.11.23
15:06:23
-10'00'

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

**AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

This Amendment and Restatement of Agreement is made this _____ day of _____, 20____ by and between the County of Maui, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County"), and the Rotary Club of Kihei Wailea, a Hawaii nonprofit corporation, whose mailing address is P.O. Box 175, Kihei, Maui, Hawaii 96753 ("RCKW"), hereinafter collectively referred to as the "Parties".

RECITALS

WHEREAS, Rescue Tubes are flotation devices intended be deployed by beachgoers to assist distressed swimmers while they await rescue; and

WHEREAS, Rescue Tubes are typically affixed to stands on the beach in areas where they can be accessed by beachgoers in emergency situations; and

WHEREAS, RCKW desires to place and maintain Rescue Tubes and Rescue Tube Stations at various Maui County beach parks; and

WHEREAS, County sees the potential benefit of Rescue Tubes being placed at Maui County beach parks; and

WHEREAS, on April 26, 2017, the Parties entered into that Agreement Regarding the Placement and Maintenance of Rescue Tubes at Maui County Beach Parks, which is set to expire on December 31, 2020 ("Original Agreement"); and

WHEREAS, the Parties wish to amend and restate the Original Agreement.

NOW, THEREFORE, County and RCKW hereby agree as follows:

1. **Term**: This Agreement shall commence upon execution and expire on December 31, 2025. This Agreement may be renewed for additional one (1) year terms upon written agreement of the Parties. This Agreement shall automatically terminate upon failure to renew prior to the expiration of the term.

2. **Scope**: This Agreement shall only pertain to the County Beach Parks listed herein and shall not be interpreted to grant permission to or authorize the placement of Rescue Tubes or Rescue Tube Stations at any other areas.

**AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

3. Costs: RCKW shall be responsible for all costs and expenses in relation to this Agreement.

4. Rescue Tube Stations: RCKW shall be responsible for the construction, placement, and maintenance of the Rescue Tube Stations. RCKW shall be responsible for the design and function of all Rescue Tube Stations. RCKW shall use its reasonable best efforts to ensure that the Rescue Tube Stations are safe and easily usable by beachgoers. RCKW shall use its reasonable best efforts to ensure that the Rescue Tube Stations are placed in safe areas that will provide reasonable access for beachgoers. RCKW shall consult with the County of Maui Department of Parks and Recreation ("Parks") and the County of Maui Department of Fire and Public Safety ("Fire") in regards to the locations where the Rescue Tube Stations shall be placed. RCKW shall acquire all necessary permits and receive all necessary approvals regarding construction, installation and placement of the Rescue Tube Stations. RCKW shall coordinate with Parks for the physical placement of the Rescue Tube Stations. RCKW shall be responsible for ensuring that Rescue Tubes are available at all Rescue Tube Stations.

5. County Beach Parks: RCKW may place Rescue Tubes and Rescue Tube Stations at the following beach parks:

Kalama Beach Park
Cove Beach Park
Charley Young Beach Park
Kamaole Beach Park I
Kamaole Beach Park II
Kamaole Beach Park III
Hana Bay Beach Park
Keawekapu Beach Park to the end of S. Kihei Rd.
Maalaea to Kealia Pond
Waipuilani Park south to W. Lipoa St.
Ulua Beach Park
Wailea Beach Resort to south end of Wailea Beach
Polo Beach to Polenalena

6. Maintenance: RCKW shall be responsible for the maintenance of the Rescue Tubes and the Rescue Tube Stations. RCKW shall be responsible to conduct, at a minimum, monthly inspections of the Rescue Tubes and the Rescue Tube Stations. RCKW shall keep a maintenance log for the term of this Agreement, including renewal terms, and shall produce it to County upon

**AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

request. County shall have the right, but not the obligation, to inspect the Rescue Tubes and Rescue Tube Stations and request that maintenance be performed by RCKW and RCKW shall perform requested maintenance within a reasonable time period.

7. Replacement of Rescue Tubes: In the event that the Rescue Tubes are missing or need to be replaced, RCKW shall be responsible for replacement.

8. Park Hours: All activities occurring in County Beach Parks shall take place during hours in which the respective County Beach Parks are open to the public, unless another agreement is made, in writing with Parks.

9. Public Education: RCKW shall be required to provide public education in regards to the Rescue Tubes and Rescue Tube Stations.

10. Relocation: RCKW may relocate its Rescue Tube Stations upon consultation with Parks and Fire. Upon request of County, within 30 calendar days, RCKW shall be required to relocate any Rescue Tube Station at RCKW's own cost and expense.

11. Removal: Upon request of County, RCKW shall remove any Rescue Tubes and Rescue Tube Stations within 30 calendar days of receipt of written notice. Upon termination or cancellation of this Agreement, as provided herein, RCKW shall remove all Rescue Tubes and Rescue Tube Stations within five (5) business days and return the area to its original condition, repairing any damage and removing all debris.

12. Public Notice: RCKW shall be responsible for providing adequate notice to the public upon relocation, removal, or maintenance of the Rescue Tubes or the Rescue Tube Stations at County Beach Parks.

13. Notice: All notices required under this Agreement shall be in writing and addressed to the party to be notified at the following address:

If to County, then to:
Director
Department of Parks and Recreation
700 Halia Nakoa Street, Unit 2
Wailuku, Hawaii 96793

**AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

With copy to:
Fire Chief
Department of Fire and Public Safety
200 Dairy Road
Kahului, Hawaii 96732

If to RCKW, then to:
President
Rotary Club of Kihei Wailea
P.O. Box 175
Kihei, Hawaii 96753

14. **Insurance:** Unless otherwise approved in writing and jointly agreed to by the Director Parks and Recreation, the Fire Chief and the Director of Finance, the policy or policies of insurance maintained by RCKW shall provide the following minimum limit(s) and coverage(s) as specified herein and be placed with an insurance carrier authorized to business in the State of Hawaii and rated A – VII by A M Best. RCKW shall procure and maintain and at its sole expense, at all times during the term of this Agreement coverage for injuries to persons or damages to property which may arise from RCKW's performance of the work as set forth in this Agreement. This coverage shall be on a primary basis and any insurance or self-insurance program purchased by the County shall not respond except on an excess basis. The coverage will be written on an occurrence form with dedicated limits to this Agreement. The procurement of this insurance, as well as the County's acceptance of the insurance maintained by RCKW is not intended to and shall not in any manner limit or quantify the liabilities or obligations assumed by RCKW under this Agreement. Defense costs shall be outside the limits and will not erode the limit of liability. The policy shall provide the following minimum limits:

- i. Bodily Injury and Property Damage Combined Single Limit;
- ii. \$1,000,000 per occurrence; and
- iii. \$2,000,000 aggregate

RCKW shall agree to endorse the policy naming the County of Maui, its elected and appointed officials, directors and employees as an Additional Insured under the policy with a CG 026 Additional Insured – Designated Person or Organization endorsement or its equivalent. RCKW shall provide the County with the original certificate and endorsements evidencing the required coverage. The Certificate of Insurance shall be provided during the renewal of the policy term and/or at the extension of this Agreement.

**AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS**

If during the term, or any additional terms, of this Agreement higher limits of insurance than those mentioned herein above shall be appropriate, customary and generally recommended for similar properties utilized for similar uses in the County of Maui, then upon request by County, RCKW shall promptly procure such higher limits.

15. Indemnification: RCKW shall indemnify, defend, and hold harmless the County, its directors, employees, and agents, from and against any and all liability, including serious bodily injury and death, in relation to any and all claims, suits, and demands, arising out of or in connection with the Rescue Tubes or the Rescue Tube Stations or this Agreement. RCKW further agrees to be responsible for any and all costs incurred by County, including attorney's fees, arising out of or in connection with such claims, suits, and demands and/or this Agreement. The provisions of this paragraph shall survive the termination or cancellation of this Agreement.

16. Cancellation: Either party may, with or without cause, cancel this Agreement with five (5) business days, written notice.

17. Governing Law: This Agreement and the rights and obligations of the Parties shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law.

18. Severability: If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

19. Counterparts: This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

20. Assignment: This Agreement may not be assigned to another party without the written consent of the County.

21. No Property Rights: Nothing in this Agreement shall be interpreted or construed to transfer of any property rights to RCKW. This Agreement is not intended to be a lease, license, easement, permit, concession, or right of entry.

AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS

22. Effective Date: This Agreement shall be effective as of the date first written above.

23. Electronic Signatures: The Parties agree that they may utilize and shall be bound by their electronic signatures, pursuant to Chapter 489E, Hawaii Revised Statutes.

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

[EXECUTION PAGES TO FOLLOW]

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AMENDMENT AND RESTATEMENT OF THE
AGREEMENT REGARDING THE PLACEMENT AND MAINTENANCE
OF RESCUE TUBES AT MAUI COUNTY BEACH PARKS


APPROVAL RECOMMENDED:

COUNTY OF MAUI



DAVID THYNE
Fire Chief

By _____
MICHAEL P. VICTORINO
Its Mayor

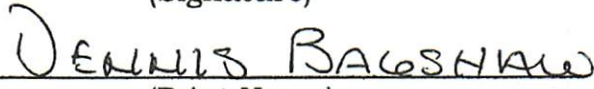


KARLA H. PETERS
Director of Parks and Recreation

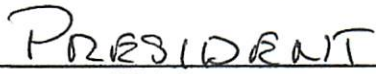
ROTARY CLUB OF KIHEI WAILEA

By 

(Signature)

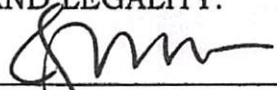


(Print Name)

Its 

(Title)

APPROVED AS TO FORM
AND LEGALITY:



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