

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Engineering Division
Honolulu, Hawaii 96813

November 13, 2020

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**REQUEST AUTHORIZATION FOR THE CHAIRPERSON TO AMEND THE
INTERGOVERNMENTAL AGREEMENT BETWEEN THE BOARD OF LAND AND
NATURAL RESOURCES, STATE OF HAWAII, AND THE COUNTY OF MAUI
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS,
MAUI, HAWAII**

BACKGROUND:

In 2004, the State Department of Land and Natural Resources (DLNR) entered into an Intergovernmental Agreement (IGA) with the County of Maui to purchase water allocation credits by providing a lump sum of \$1.0 million to drill a well located at Camp Maluhia Site No. 1 (Exhibit A).

The County of Maui, Department of Water Supply (DWS) did not drill the well during that time period, and DLNR now is working with DWS to drill a well(s) to obtain water allocation credits to support State projects in Central Maui (Exhibit B).

Over the years, DWS has determined that the Camp Maluhia Site No. 1 is not an area to produce quality wells and thus has been looking at other locations within the Waihee Aquifer to drill a well(s) to serve Central Maui of which DWS has 5 successful wells (Exhibit C).

After discussions with the DWS, DLNR now seeks Board approval to amend the IGA to pursue well development at an alternative site to the Camp Maluhia Site No. 1. DLNR will now consult with DWS to assist with determining the new site.

ITEM L-1

DLNR and DWS desire to amend the original Agreement to allow DLNR to participate in the development of site wells for Central Maui mutually designated by the State and the County, where the State will receive water allocation credits for State projects in direct proportion to its financial contribution. The Department's priority is to utilize any water allocation credits gained from this agreement to support its proposed industrial and business park development at Pulehunui, Maui.

At its regular meeting on June 19, 2020, the Maui County Council passed Bill No. 75, which authorizes the Mayor to enter into an amendment to this IGA with the Board of Land and Natural Resources, State of Hawaii.

AGREEMENT:

DLNR and County of Maui desires to enter into an Amendment to the original IGA. The Draft Amendment to the original IGA is attached (Exhibit D) and revisions are as follows:

1. The title of the Agreement is amended as follows:
Intergovernmental Agreement between the State of Hawaii and the County of Maui, regarding the purchase of water allocation credits from Site Well development for State projects.
2. Paragraph 1 of the Agreement is amended to read as follows:
 1. The State administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of Site Well(s) for Central Maui mutually designated by the STATE and the COUNTY, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.
3. All references to the "Camp Maluhia Site No. 1 well" in the original Agreement shall be replaced with the term "Site Well(s) for Central Maui Mutually designated by the State and the County"

The entire Agreement, as amended herein, shall remain in full force and effect.

November 13, 2020

RECOMMENDATION:

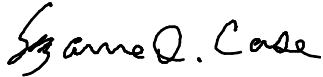
That the Board of Land and Natural Resources authorize the Chairperson to sign the Amendment to the Intergovernmental Agreement regarding the purchase of water allocation credits from site wells for State projects and other necessary documents pertaining to the Amendment, subject to the Deputy Attorney General's approval as to form.

Respectfully Submitted,



CARTY S. CHANG
Chief Engineer

Approved for Submittal:



SUZANNE D. CASE
Chairperson

Exhibits:

- A. Inter-governmental Agreement Between the State and the County of Maui, Regarding the Purchase of Water Allocation Credits from the Camp Maluhia Site No. 1 Well Development for State Projects
- B. State Projects Water Demands in Central Maui
- C. Well Sites Location Map
- D. Draft Amendment to the IGA

INTER-GOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS

This Agreement, made this 30th day of June, 2004, by and between the Board of Land and Natural Resources, State of Hawaii, whose street address is 1151 Punchbowl Street, Room 130, Honolulu, Hawaii, 96813, hereinafter referred to as the "STATE", and the County of Maui, a political subdivision of the State of Hawaii, whose street address is 200 South High Street, Wailuku, Maui, Hawaii, 96793-2155, hereinafter referred to as the "COUNTY".

The STATE and COUNTY, in consideration of the mutual promises hereinafter set forth, mutually agree as follows:

1. The STATE administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of the Camp Maluhia Site No. 1 Well on TMK: 3-1-01:020, Waihee, Maui, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.
2. The water allocation credit is the capacity of resource development facilities measured in gallons per day that the STATE is entitled to allocate or assign to State agencies or their tenants within the areas served by the COUNTY Central Maui Water System.
3. The STATE agrees that payment towards the development of Camp Maluhia Site No. 1 Well will not be applied towards any other STATE obligation to the COUNTY and will not relieve the STATE of its obligation, if any, to the COUNTY for transmission charges, daily storage charges, billing charge or quantity charge.
4. The development of the Camp Maluhia Site No. 1 Well shall include but not be limited to the following: planning, design, permitting and constructing (drilling and testing) of the exploratory well; planning, design, permitting and constructing (development) of the well and treatment facility (if necessary), including furnishing and installing of pump, control building and equipment, piping, electrical equipment and other related infrastructure and site improvements deemed necessary by the COUNTY for the development of the well.

5. The STATE desires to pay the COUNTY \$1,000,000.00 to contribute towards the cost related to the exploratory drilling and testing of the Camp Maluhia Site No. 1 Well pursuant to Act 259, SLH 2001, Item A-13, as amended by Act 177, SLH 2002, Item A-13.

6. The COUNTY will prepare contract plans and specifications, prepare and process an environmental assessment, Well Construction and Pump Installation Permits from the Commission on Water Resources Management (CWRM) and any other related permits, Right-of-Entry agreement(s), Well Test Report to the CWRM, and Department of Health Engineering Report for the development of the Camp Maluhia Site No. 1 Well, transmission mains and appurtenances.

7. The capacity of the source will be the total recommended aggregate yield from the Camp Maluhia Site No. 1 Well as determined by the COUNTY and agreed upon by the STATE. This aggregate yield will be based on the smaller of the following:

- a. Sustainable capacity of the wells.
- b. Design capacity of the installed pumps ($\frac{2}{3} \times \frac{2}{3} \times$ pump capacity).

8. The STATE and COUNTY agree that the cost of the water allocation credit (\$/gallon/day) will be calculated by dividing the total cost for all improvements and services listed in Item Nos. 4 and 6 by the recommended aggregate yield from the Camp Maluhia Site No. 1 Well (reference paragraph 7).

9. All development costs listed in item Nos. 4 and 6 shall be fully documented and such documentation shall be provided by the COUNTY to the STATE within 90 days from the completion or final acceptance of construction work.

10. The total gallons per day of water allocation credits from the Camp Maluhia Site No. 1 Well to be provided to the STATE will be calculated by dividing the development costs paid by the STATE by the cost of the water allocation credit (reference paragraph 8). The COUNTY reserves the right to revise the water allocation credits based on the total recommended yield (reference paragraph 7) of the wells. The COUNTY will not allocate water until the completion of all improvements and collection of all payments stipulated by this Agreement. The COUNTY reserves the rights to withhold the use of water allocation credits if its interconnected water systems are unable to accommodate the additional water demands.

11. The STATE and COUNTY agree water allocation credits (gallons per day) shall be limited to source.

12. The STATE shall utilize all water allocation credits within five years from the completion date of the development of the Camp Maluhia Site No. 1 Well (reference paragraph 4). COUNTY shall notify the STATE of the completion date. By mutual consent of the STATE and COUNTY, water allocation credits may be extended beyond the duration of this Agreement. However, if the COUNTY withholds the use of water allocation credits as described in item No. 10, the time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

13. If the water allocation credits are not used by the STATE for State projects within the stipulated time, the COUNTY reserves the right to take back the unused water credits from the STATE and to pay the STATE for the unused water credits at a mutually agreeable cost. However, if the COUNTY withholds the use of water allocation credits as described in item No. 10, the stipulated time within which the allocation credits must be used shall be automatically extended by the same amount of time that the STATE is restricted from using its water allocation credits.

14. The STATE will be solely responsible to coordinate the allocation of the water allocation credits for State projects.

15. The STATE and COUNTY are authorized to enter into this Agreement.

16. This Agreement may not be altered, amended or modified except by an agreement entered into in writing and signed by both parties to this Agreement.

17. This Agreement contains all of the terms, covenants, conditions, stipulations and agreements between the STATE and COUNTY in relation to the STATE's purchase of water allocation credits from COUNTY's Camp Maluhia Site No. 1 Well. This Agreement supersedes and cancels each and every other agreement; promise and negotiation between the parties with reference to the purchase, and no party shall be bound by any inducement, statement, representation, promise or agreement not in conformity herewith.

18. This Agreement shall be binding upon the STATE and COUNTY and their respective successors and permitted assigns.

19. This Agreement is subject to the availability of funds and allotment by the Director of Finance in accordance with Chapter 37, HRS.

The STATE and COUNTY also agree that the following provisions be made a part of this Agreement as general terms:

1. Indemnification. COUNTY shall indemnify, defend, and hold harmless the STATE, its officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, actions, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, or death of persons, whenever such damage, injury, loss, or death arises out of, is connected with or related to the development of Camp Maluhia Site No. 1 Well. It is understood that the State shall in no way be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of COUNTY in the development of Camp Maluhia Site No. 1 Well.

2. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawaii, and the courts of the State of Hawaii shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.

3. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of COUNTY, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
4. Compliance with laws. COUNTY shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the development of Camp Maluhia Site No. 1 Well, now in force or which may be in force.
5. Assignments. COUNTY shall not transfer to, assign, or permit any other person to perform COUNTY 's duties, obligations, or interests under this Agreement, either voluntarily or by operation of law, without the prior written approval of the State.
6. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.
7. Partial invalidity. If any term, provision, covenant or condition of this Agreement should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
8. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.
9. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.
10. No Partnership. COUNTY and the State agree that nothing in this Agreement should be construed as creating any type of partnership or joint venture arrangement or principal and agent relationship between them.
11. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

In view of the above, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

STATE

By: 

PETER T. YOUNG
Chairperson, Board of Land and Natural
Resources

Date: JUL 27 2004

COUNTY OF MAUI

By: 

ALAN M. ARAKAWA
Mayor

Date: 6/27/04

APPROVED AS TO FORM AND LEGALITY:



EDWARD S. KUSHI, JR.
Deputy Corporation Counsel
County of Maui

APPROVED AS TO FORM:



Deputy Attorney General

DRAFT

State Projects
Central Maui Water System

Maui										
Project ID	Project Name	Demands (MGD)								
		2015	2016	2017	2018	2019	2024	2029	2034	Tax Map Key
DOE-090	Kihei Elementary School New Administration	0	0	0	0	0	0	0.0006	0.0006	(2) 2-2-002:043
DOE-125	Lokelani Intermediate School New Admin	0	0	0	0	0	0	0.0009	0.0009	(2) 2-2-002:043
DOE-126	Lokelani Intermediate School New Cafeteria	0	0	0	0	0	0	0.0027	0.0027	(2) 2-2-002:043
DOE-127	Lokelani Intermediate School New Class	0	0	0	0	0	0	0.0108	0.0108	(2) 2-2-002:043
DOE-091	Kihei High School (New School)	0	0	0	0	0	0	0.12	0.12	(2) 2-2-002:081
DOE-150	Paia New Elementary School New Administration	0	0	0	0	0	0	0.006	0.006	(2) 2-5-005:004
DOT-013	Kahului Hawaiian Cement Relocation	0	0	0	0	0	0.003	0.003	0.003	(2) 3-7-008:004
DOT-014	Kahului Harbor New Office	0	0	0.0002	0.0002	0.0002	0.0002	0.0002	0.0002	(2) 3-7-010:036
DOT-012	Kahului Cargo Yard With Ameneties	0	0	0	0	0	0	0.006	0.006	(2) 3-7-011:017,023
DOT-006	OGG ConRAC	0	0	0	0	0	0	0	0.068	(2) 3-8-001:019
DOT-007	OGG Subdivison	0	0	0	0	0	0	0	0.0759	(2) 3-8-001:019
UHC-009	Maui College - Hospitality Academy Renovation	0	0	0.00027	0.00027	0.00027	0.00027	0.00027	0.00027	(2) 3-8-007:040
UHC-011	Maui College - Pilina Kitchen	0	0	0	0.00137	0.00137	0.00137	0.00137	0.00137	(2) 3-8-007:040
DOE-008	Central Maui Middle School (New School)	0	0	0	0	0	0	0.1	0.1	(2) 3-8-007:101
DOE-030	Hawaiian Language Immersion Program (HLIP) Maui - New School	0	0	0	0	0	0	0.06	0.06	(2) 3-8-007:101
DLN-010	Pulehunui Baseyard	0	0	0	0	0	0	0.0243	0.0243	(2) 3-8-008:001
DLN-XXX	DLNR Industrial and Business Park	0	0	0	0	0	0.5971	0.5971	0.5971	(2) 3-8-008:001
DHL-061	DHHL Puunene	0	1.734	1.734	1.734	1.734	1.734	1.734	1.734	(2) 3-8-008:008,034-036
DAG-009	Maui Regional Public Safety Complex	0	0	0	0	0	0	0.2816	0.2816	(2) 3-8-008:037 and 001
	TOTAL CENTRAL MAUI WATER SYSTEM	0	1.734	1.73447	1.73584	1.73584	2.33594	2.94884	3.09274	

IAO
AQUIFER

WAIHEE
AQUIFER

KAHAKULOA
AQUIFER

North Waihee
Wells 1 & 2

Camp Maluhia
Site No. 1 Well
TMK:3-1-01:020
site to be re-evaluated

Kanoa Well 2

Kupaa Well 1

Kanoa Well 1

Google Earth

Data SIO, NOAA, U.S. Navy, NGA, GEBCO
Data SOEST/UHM



1 mi

DRAFT

AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII AND THE COUNTY OF MAUI,
REGARDING THE PURCHASE OF WATER ALLOCATION CREDITS FROM THE
CAMP MALUHIA SITE NO. 1 WELL DEVELOPMENT FOR STATE PROJECTS

This Amendment to Agreement is made and entered into by and between the Board of Land and Natural Resources, State of Hawaii, whose business address is 1151 Punchbowl Street, Room 130, Honolulu, Hawaii 96813, hereinafter referred to as the "STATE", and the County of Maui, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Hawaii 96793, hereinafter referred to as the "COUNTY".

RECITALS

1. The STATE and the COUNTY entered into that certain Intergovernmental Agreement Between the State of Hawaii and the County of Maui Regarding the Purchase of Water Allocation Credits from the Camp Maluhia Site No. 1 Well Development for State Projects on June 30, 2004, hereinafter referred to as the "Agreement".

2. The STATE and the COUNTY desire to amend the Agreement.

NOW, THEREFORE, the STATE and the COUNTY mutually agree to amend the Agreement as follows:

1. The title of the Agreement is amended as follows:

INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF
HAWAII AND THE COUNTY OF MAUI, REGARDING THE PURCHASE OF
WATER ALLOCATION CREDITS FROM SITE WELL DEVELOPMENT FOR
STATE PROJECTS

2. Paragraph 1 of the Agreement is amended to read as follows:

1. The STATE administers the Water and Land Development Program. The program objective is to promote economic development and enhance public welfare by developing water supplies and State lands. In accordance with the objective, the STATE desires to participate in the development of Site Well(s) for Central Maui mutually designated by the STATE and the COUNTY, by financial contribution. The STATE will receive water allocation credits for State projects in direct proportion to its financial contribution.

3. All references to the "Camp Maluhia Site No. 1 Well" in the Agreement shall be replaced with the term "Site Well(s) for Central Maui mutually designated by the STATE and the COUNTY".

The entire Agreement, as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the STATE and the COUNTY execute this Amendment by their signatures on the dates below, to be effective as of the date of the last signature hereto.

Approved by the Board of Land
and Natural Resources on:

APPROVED AS TO FORM
AND LEGALITY:

Name:
Deputy Attorney General
State of Hawaii

STATE OF HAWAII

By _____
SUZANNE D. CASE
Chairperson
Board of Land and Natural Resources

Date: _____

Approved by the Maui County
Council on:

REVIEWED AND APPROVED:

JEFFREY T. PEARSON, P.E.
Director
Department of Water Supply
County of Maui

APPROVED AS TO FORM
AND LEGALITY:

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

COUNTY OF MAUI

By _____
MICHAEL P. VICTORINO
Its Mayor

Date: _____

STATE OF HAWAII)
) SS.
CITY & COUNTY OF HONOLULU)

On this ____ day of _____, 20____, before me personally appeared SUZANNE D. CASE, 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: _____ _____ _____ _____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this ____ day of _____, 20__, before me personally appeared MICHAEL P. VICTORINO, to me personally known, who, being by me duly sworn or affirmed, 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 pursuant to the Charter of the County of Maui; 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 Hawaii

Print Name: _____

My commission expires: _____

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

Notary Signature: _____	[Stamp or Seal]
Date: _____	