

NON-BINDING MEMORANDUM OF INTENT

This Non-Binding Agreement of Intent is by and between the Kalihiwai Ridge Community Association (hereinafter "KRCA"), Porter Irrigation, LLC a Delaware limited liability company and CG Utilities, LLC, a Hawai'i limited liability company (hereinafter collectively for ease of reference only "Owners") and 'Aina Ho'okupu O Kilauea, a Hawai'i nonprofit corporation (hereinafter "AHK") and is with reference to the Kalihiwai Dam located on property owned by KRCA and designated as Tax Map Key No. (4) 5-2-022: 03 ("Lot 3").

RECITALS

WHEREAS, this Agreement is non-binding and is a statement of intent only, subject to further agreement, negotiation and documentation;

WHEREAS, Owners collectively own easements and real property (Lot 3) associated with and pertaining to the Kalihiwai Dam which has been ordered by the State of Hawaii to be made to meet modern safety standards, whether through remediation or removal, and Owners have the ability only to decommission the dam, resulting in the loss of water retention capacity previously existing for the Kalihiwai Reservoir;

WHEREAS, AHK desires, on behalf of the community to, if reasonably feasible, reconstruct the Kalihiwai Dam so that it is able to retain water and be in compliance with State of Hawaii dam safety requirements; and,

WHEREAS, Owners are willing to enter into negotiations to accomplish the purpose of AHK on terms and conditions to be identified, negotiated and documented without specific commitment by any Owners until all such terms and conditions are resolved;

NOW THEREFORE, with reference to the above stated recitals, each of which are incorporated herein by this reference, the Parties agree as follows:

1. The parties shall proceed with good faith negotiations to address their respective interests, concerns, and needs with respect to the possible reconstruction of the Kalihiwai Dam.
2. AHK is authorized to share this Agreement with prospective participants in the restoration of the Kalihiwai Dam project as envisioned by AHK.
3. AHK understands that the current plan submitted for the Kalihiwai Dam and pending before the DNLR is for the deconstruction and decommissioning of the Kalihiwai Dam. Should the parties to this non-binding Memorandum ultimately agree to an alternative, that then would require a new binding definitive agreement. Any such new binding definitive agreement would result in a new submission to the State of Hawaii and will necessarily require the consent of the parties to this Agreement as well as appropriate governmental agencies including, without limitation, the DNLR.

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4. AHK acknowledges that it is bearing the sole expense for the exploration of opportunity contemplated in this Memorandum and is not expecting reimbursement of such expenses from any of the Owners.

5. This Non-Binding Agreement of Intent may be executed in counterparts, all of which together shall be deemed the original. Facsimile and pdf signatures shall be deemed original signatures for all purposes.

Executed this 5th day of March, 2023 in Kauai, State of Hawaii.

Kalihiwai Ridge Community Association

By: _____
Its: President

and

By: _____
Its: Treasurer

CG Utilities LLC,
a Hawai'i Limited Liability Company

By: 
Oliver Niedermaier, Manager
and Member

Porter Irrigation LLC,
a Hawai'i Limited Liability Company

By: _____
Kelly Porter, Authorized Representative

Aina Ho'okupu O Kilauea,
a Hawai'i nonprofit corporation

By: 
Authorized Representative
YOSHITO LIHOTE CEO

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Executed this 2nd day of March, 2023 in Kauai, State of Hawaii.

Kalihiwai Ridge Community Association

By: _____
Its: President

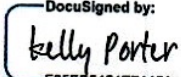
and

By: _____
Its: Treasurer

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a Hawai'i Limited Liability Company

By: _____
Oliver Niedermaier, Manager
and Member

Porter Irrigation LLC,
a Hawai'i Limited Liability Company

By:  _____
Kelly Porter, Authorized Representative

Aina Ho'okupu O Kilauea,
a Hawai'i nonprofit corporation

By: _____
Authorized Representative

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Executed this 15th day of March, 2023 in Kauai, State of Hawaii.

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By: 
Its: President

and

By: 
Its: Treasurer

CG Utilities LLC,
a Hawai'i Limited Liability Company

By: _____
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