

# REQUEST FOR LEGAL SERVICES

RECEIVED  
CORPORATION COUNSEL

**Date:** March 27, 2018  
**From:** Stacy Crivello, Chair  
Housing, Human Services, and Transportation Committee

2018 MAR 27 PM 2:26

**TRANSMITTAL**


**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Gary Murai, Esq.

**Subject:** KA HALE A KE OLA WESTSIDE SHELTER (HHT-20)

**Background Data:** Please review the attached revised proposed resolution and, if appropriate, approve it as to form and legality. A single revision has been made on page 2, to correct the spelling of "Westside." A signed hard copy is requested with your response.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Stacy Crivello	Contact Person <u>Carla Nakata</u> (Telephone Extension: 7659)
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☐ ROUTINE (WITHIN 15 WORKING DAYS) ☐ RUSH (WITHIN 5 WORKING DAYS)  
☐ PRIORITY (WITHIN 10 WORKING DAYS) ☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): March 27, 2018, 4:30 p.m.

REASON: To be submitted for posting on the agenda for the April 6, 2018 Council meeting.

**FOR CORPORATION COUNSEL'S RESPONSE**

ASSIGNED TO: <u>amy</u>	ASSIGNMENT NO. <u>0017-0097</u>	BY: <u>tm</u>
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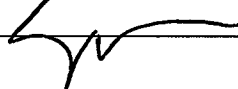
TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ 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 MAR 27 2018

By 

(Rev. 7/03)

hht:ltr:020acc02:cmn

Attachment

# Resolution

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

AUTHORIZING REPAYMENT PLAN IN  
SETTLEMENT OF KA HALE A KE OLA HOMELESS  
RESOURCE CENTERS, INC.'S OUTSTANDING  
DEBT RELATED TO THE CONSTRUCTION OF THE  
KHAKO WESTSIDE FACILITY

WHEREAS, MAUI ECONOMIC CONCERNS OF THE COMMUNITY, INC. ("MECC"), and the COUNTY OF MAUI ("County") entered into a Loan Agreement of County Funds dated April 30, 2003, for \$4,000,000 for the construction of the West Maui Resource Center, a copy of which is attached hereto and made a part hereof as Exhibit "1"; and

WHEREAS, MECC subsequently executed a Promissory Note agreeing to pay the County the principal sum of \$4,005,000, representing the \$4,000,000 loan amount and \$5,000 in legal fees incurred in the closing of the issuance of the bonds, plus interest, a copy of which is attached hereto and made a part hereof as Exhibit "2"; and

WHEREAS, the Promissory Note attaches as Exhibit "A" a schedule of payments for \$4,005,000 in principal and \$2,861,083.85 in interest costs, for a total of \$6,866,083.85, commencing on June 30, 2006 and ending June 30, 2030; and

WHEREAS, MECC is now known as KA HALE A KE OLA HOMELESS RESOURCE CENTERS, INC. ("KHAKO"), and the West Maui Resource Center referred to in the Loan Agreement of County Funds, subsequently known as Na Hale O Wainee, is now known as KHAKO Westside; and

WHEREAS, KHAKO made one payment of \$25,000 on December 7, 2017, into an escrow account to begin repayment of the KHAKO Westside loan; and

WHEREAS, KHAKO has proposed a repayment plan for the outstanding debt for KHAKO Westside that would, among other things, restate the principal amount of the loan to include the accrued interest to date, cease accrual of further interest, and provide for payments in the amount of \$100,000 per year, payable in quarterly installments; and

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

WHEREAS, KHAKE's repayment proposal is attached hereto and made a part hereof as Exhibit "3"; and

WHEREAS, Section 3.36.170(D), Maui County Code, authorizes the Council to adopt a resolution revising, deferring, or waiving loan repayment terms in part or whole at the application of the loan recipient; and

WHEREAS, having reviewed the facts and circumstances regarding KHAKE's loan repayment proposal for the KHAKE Westside facility, the Council wishes to authorize acceptance of the repayment proposal, as authorized by Section 3.36.170(D), Maui County Code; now, therefore,

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

1. That it hereby approves the loan repayment proposal by KHAKE in settlement of the Loan Agreement of County Funds and Promissory Note, attached hereto as Exhibits "1" and "2," respectively, under the terms set forth in the loan repayment proposal attached as Exhibit "3";
2. That the status of loan repayments, the financial statements of KHAKE, and the operations of KHAKE Westside shall be reviewed every five years to determine if quarterly loan payments can be adjusted upwards, until the principal loan balance and accrued interest to date have been fully repaid;
3. That it hereby authorizes the Mayor to execute all necessary documents on behalf of the County under such terms and conditions as may be imposed, and agreed to, by the Corporation Counsel; and
4. That certified copies of this resolution be transmitted to the Mayor, the Director of Finance, the Director of Housing and Human Concerns, the Corporation Counsel, and KHAKE.

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

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to read 'Gary Y. Murai', is written over a horizontal line.

GARY Y. MURAI  
Deputy Corporation Counsel  
County of Maui

hht:misc:020areso02:ssm/cmn

LOAN AGREEMENT OF COUNTY FUNDS

APR 30 2003

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by and between MAUI ECONOMIC CONCERNS OF THE COMMUNITY, INC., a non-profit Hawaii corporation, whose address is 670 Waiale Road, Wailuku, Hawaii 96793, hereinafter called the "BORROWER", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter called "COUNTY".

W I T N E S S E T H:

WHEREAS, the COUNTY desires to support and encourage emergency/transitional and affordable housing for homeless and very low income persons within the County of Maui; and

WHEREAS, the COUNTY also desires to support and encourage comprehensive programs to help the homeless of the County of Maui; and

WHEREAS, pursuant to Ordinance No. 2963 (2001), the "Fiscal Year 2002 Budget", an appropriation in the amount of \$4.0 million in general obligation bond proceeds ("Appropriation") was made for purposes of the West Maui Resource Center; and

WHEREAS, pursuant to Ordinance No. 2965 (2001), as amended by Ordinance No. 3006 (2001), the Director of Finance of the County of Maui has been authorized to issue and sell general obligation bonds, the proceeds derived from the sale of which shall be used to pay all or part of the cost of appropriations for public improvements of the County, including the West Maui Resource Center; and

EXHIBIT " 1 "

WHEREAS, pursuant to a Lease dated November 6, 2001 by and between COUNTY and BORROWER, as amended by a First Amendment to Lease, BORROWER leases approximately five acres of land identified as Tax Map Key Number: (2) 4-6-015:por. 001 upon which the West Maui Resource Center is being developed; and

WHEREAS, a loan commitment letter ("Loan Commitment") was signed by COUNTY and BORROWER on December 12, 2002, a copy of which is attached hereto as "Exhibit A" and incorporated herein by reference, encumbering the Appropriation totaling \$4.0 million; and

WHEREAS, the COUNTY and BORROWER are executing concurrently herewith a Regulatory Agreement and Declaration of Restrictive Covenants to ensure that the West Maui Resource Center is operated as a public improvement for the benefit of the COUNTY and its residents and to assure COUNTY and owners of COUNTY'S general obligation bonds that interest on the bonds will be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended; and

WHEREAS, pursuant to the Regulatory Agreement and Declaration of Restrictive Covenants, BORROWER has agreed with the COUNTY to the conditions, limitations and procedures for operation of the West Maui Resource Center set forth therein;

NOW, THEREFORE, the COUNTY and BORROWER in consideration of the mutual promises hereinafter set forth hereby agree as follows:

A. Loan Amount and Purpose: The COUNTY agrees to make available to BORROWER, as a loan for construction costs associated with the West Maui Resource Center, a sum not to exceed FOUR

MILLION DOLLARS (\$4,000,000) in County funds. BORROWER agrees to use the loan funds solely for the construction of the West Maui Resource Center.

B. Method of Loan Disbursement: BORROWER shall submit to the County a written loan disbursement request ("Loan Disbursement Request") attached hereto as "Exhibit B" in accordance with County procedures. Each request for disbursement shall be authenticated as to accuracy by the BORROWER and verified by a designated County official. Each request for loan disbursement shall include the following:

1. Certification by BORROWER that the work for which disbursement is requested was performed in accordance with the terms of this Agreement and the Regulatory Agreement and Declaration of Restrictive Covenants; and

2. Copies of all contracts, bills, invoices and purchase orders that support the Loan Disbursement Request, which shall:

- a. Be under the letterhead of the BORROWER or other legal entity requesting payment;

- b. Bear the signature of an authorized official of the BORROWER;

3. BORROWER'S estimate of percent of completion of the West Maui Resource Center and a spreadsheet summarizing contractor's invoices, consultant's invoices, administration costs, and other costs.

BORROWER shall maintain in its files, at all times, documentation certifying that the work described in any invoices, executed contracts or Loan Disbursement Requests submitted to the COUNTY are complete, correct, and in accordance with the terms of this Agreement.

C. Repayment of Loan: The Loan Commitment dated December 12, 2002 sets forth the general terms and conditions of the repayment of the \$4.0 million loan. The Loan Commitment contemplates the issuance of appropriate bond financing after the completion of the West Maui Resource Center construction. BORROWER hereby agrees to cooperate with COUNTY to complete the required documents including, but not limited to, a promissory note, that set forth the terms and conditions of the loan repayment. The promissory note shall specify, among other things, the interest rate and term of the loan and the required amount and timing of loan payments. BORROWER and COUNTY shall execute, deliver, and, if applicable, file or record any and all documents as are reasonably necessary to effectuate the intent of this Section C. COUNTY and BORROWER acknowledge that BORROWER has made certain representations to other funding sources in order to receive funding from such other funding sources for the construction of the West Maui Resource Center. COUNTY agrees that the terms and conditions of the promissory note will not knowingly require BORROWER to breach such prior representations.

D. Reversion of Assets: The BORROWER is prohibited from disposing of any real or personal property acquired with COUNTY funds received under this Agreement, without first receiving the



prior written consent of the COUNTY. Should the BORROWER cease to use any real or personal property acquired with COUNTY funds for the purposes described in this Agreement, the BORROWER shall either:

a. Pay the COUNTY the current fair market value of the asset; or

b. Transfer the control of the asset to the COUNTY.

Unless the BORROWER has the written consent of the COUNTY, upon expiration or termination of this Agreement, the BORROWER shall transfer to the COUNTY:

(i) Any COUNTY funds on hand at the time of expiration or termination; and

(ii) Any real and/or personal property acquired or approved in whole or in part with COUNTY funds.

E. Independent Contractor: BORROWER acknowledges that it is an independent contractor and not an employee of the COUNTY.

F. Indemnification: BORROWER shall indemnify and save harmless the COUNTY, its officers, agents, and employees from and against any and all manner of actions and claims arising, either directly or indirectly, out of or resulting from the errors, omissions, or acts of BORROWER, its officers, its employees, or its agents occurring during or in connection with the performance of the BORROWER'S services under this Agreement. BORROWER shall defend the COUNTY against any such action or claim that does not involve an act or omission solely of the COUNTY, its officers, agents, or employees.

G. Contracting: COUNTY hereby authorizes BORROWER to contract, as needed, with licensed and authorized contractors, to construct the West Maui Resource Center as described in documents previously submitted to the COUNTY. BORROWER further agrees and covenants that with respect to any contract:

1. BORROWER shall be responsible for the performance of any contractor;

2. BORROWER shall require the contractor to defend, indemnify and save harmless the COUNTY, its officers, agents, and employees from and against any and all manner of actions and claims arising out or resulting from any such work or services so contracted. BORROWER further agrees to require its contractor(s) to obtain and keep in force, until completion of construction: performance and payment bonds for the amount of the contracts; and policies of insurance which shall name COUNTY as a named additional insured.

3. No contract shall in any event or in any manner incur any additional obligation, liability or cost to the COUNTY in addition to the obligations, liabilities and cost set forth in this Agreement.

4. Each contractor shall be subject to and shall conform with all applicable provisions of this Agreement.

5. In the event BORROWER is sued, or is threatened with litigation by or with a contractor, BORROWER shall immediately notify the COUNTY in writing of such litigation or threatened litigation.

6. Payment of amounts owed to any contractor shall be the responsibility of BORROWER.

7. BORROWER shall procure contractor services through a competitive procurement process.

8. BORROWER shall not consider contractors debarred, suspended or voluntarily excluded from participating in COUNTY-assisted programs.

H. Construction Activities: BORROWER shall promptly notify COUNTY in writing of:

1. Any proposed change in scope of the West Maui Resource Center. No change will be undertaken until written notice of the proposed change has been provided to COUNTY and COUNTY has given written approval for such change.

2. Any construction change order or orders, which either individually or collectively represent a \$50,000 or more increase in total construction costs.

3. Cessation of all major construction work where such cessation of work is expected or does extend for a period of thirty (30) days or more.

4. Any circumstance, combination of circumstances, or condition which is expected to or does delay completion of construction for a period of ninety (90) days or more beyond the estimated construction completion date of December 31, 2003.

5. Completion of construction of the West Maui Resource Center.

I. Project Access: Authorized representatives of the COUNTY shall have access to the project site at all reasonable times during construction and for the useful life thereafter of the West Maui Resource Center. Inspections may be unannounced.

J. Effective and Termination Dates: The effective date of this Agreement is the date first above written. This Agreement shall remain in effect for the useful life of the West Maui Resource Center or until the date that the final loan repayment is received, whichever period is longer, unless this Agreement is sooner terminated or extended.

K. Consent: Except where otherwise provided, whenever the prior written consent or approval of the COUNTY is required, such consent or approval shall mean the consent or approval of the Mayor or the Director of Finance.

L. General Conditions: In consideration of a loan of County funds, the BORROWER shall agree to the following conditions in the use and administration of the County funds:

1. Initial and final payment under this Agreement shall be subject to receipt by the COUNTY of original copies of the State of Hawaii Tax Clearance Certificate(s) for the BORROWER validated by the State of Hawaii Department of Taxation and the Internal Revenue Service (IRS);

2. BORROWER shall not discriminate in the hiring of staff, or in the compensation, terms or conditions of employment of individuals on the basis of race, color, ancestry, religion, creed,

sex, sexual orientation, disability, age, marital status, arrest and court record;

3. BORROWER shall not discriminate in the use of volunteers or delivery of client services on the basis of race, color, ancestry, religion, creed, sex, disability, age, marital status, parental status, arrest and court record, National Guard participation or HIV infection;

4. BORROWER shall provide written reports to the Department of Housing and Human Concerns as may be reasonably required to provide adequate monitoring of loan proceeds, progress of construction, and operation of the West Maui Resource Center;

5. BORROWER shall comply with its articles of incorporation and bylaws and all relevant county, state and/or federal rules and regulations concerning its policies and operations;

6. BORROWER shall not compensate its employees more than the wages then prevailing in the State of Hawaii for employees with similar skills and abilities. BORROWER shall not pay any commissions, bonuses or similar to its employees;

7. The COUNTY may audit BORROWER to determine compliance with the terms of this Agreement. BORROWER shall cooperate fully and assist the COUNTY in such audit.

8. BORROWER shall not use any portion of this loan for lobbying purposes.

M. Modification of Agreement: This Agreement may be amended only by a written agreement executed by the parties.

N. Termination of Agreement: If, for any cause, the BORROWER fails to satisfactorily fulfill in a timely or proper manner its obligations under this Agreement or if the BORROWER breaches any of the promises, terms or conditions of this Agreement and, having been given reasonable notice of an opportunity to cure any such default, fails to take satisfactory corrective action within the time specified by the COUNTY, the COUNTY shall have the right to terminate this Agreement by giving written notice to the BORROWER of such termination. The COUNTY may terminate this Agreement without cause by giving written notice to the BORROWER thirty (30) calendar days before the effective date of such termination.

O. Notices: Any notice given hereunder shall be made in writing and shall be given by personal delivery, postage prepaid mail, or by telecopy, in each case at such address as may be specified in writing by the parties.

Unless otherwise specified by COUNTY, the address of the COUNTY is:

Director of Finance  
County of Maui  
200 S. High Street  
Wailuku, Hawaii 96793

Unless otherwise specified by MECC, the address of MECC is:

Maui Economic Concerns of the Community, Inc.  
670 Waiale Road  
Wailuku, Hawaii 96793  
ATTN: Executive Director

IN WITNESS WHEREOF, the parties hereto have executed the Agreement the day, month and year first above written.

**BORROWER:**

MAUI ECONOMIC CONCERNS OF THE  
COMMUNITY, INC.

(CORPORATE SEAL)

By Caroline Peters Egli  
(Signature)

Caroline Peters Egli  
(Print Name)

Its Board Chair  
(Title)

By Charles H. Regan  
(Signature)

Charles H. Regan  
(Print Name)

Its Executive Director  
(Title)

**APPROVAL RECOMMENDED:**

Alice L. Lee  
ALICE L. LEE  
Director of the Department of  
Housing and Human Concerns

**COUNTY OF MAUI:**

By Alan M. Arakawa  
ALAN M. ARAKAWA  
Its Mayor

**APPROVED AS TO FORM  
AND LEGALITY;**

Brian T. Moto  
BRIAN T. MOTO  
Corporation Counsel  
County of Maui  
S:\ALL\BTH\MECC LOAN AGREEMENT OF COUNTY FUNDS.2.wpd

By Keith A. Regan  
KEITH A. REGAN  
Its Director of Finance

STATE OF HAWAII )

) SS.

COUNTY OF MAUI )

On this 29th day of April, 2003, before me appeared Carol Ann Peters Eddy to me personally known, who, being by me duly sworn, 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.

C.S.

June N. Higa  
NOTARY PUBLIC, State of Hawaii  
June N. Higa  
(Print Name)  
My commission expires: 3/26/03

STATE OF HAWAII )

) SS.

COUNTY OF MAUI )

On this 29th day of April, 2003, before me appeared Charles H. Ridings to me personally known, who, being by me duly sworn, 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.

Yvonne M. Iwasaki  
NOTARY PUBLIC, State of Hawaii  
YVONNE M. IWASAKI  
(Print Name)  
My commission expires: 12/16/03



STATE OF HAWAII )

COUNTY OF MAUI )

SS.

APR 30 2003

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me appeared ALAN M. ARAKAWA, 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, 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 Section 7-6.2 and Section 9-18.1 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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.

*Linda K. Tamashiro*  
NOTARY PUBLIC, State of Hawaii  
**LINDA K. TAMASHIRO**  
(Print Name)  
My commission expires: 10/19/06

NOTARIZE

STATE OF HAWAII )

COUNTY OF MAUI )

SS.

On this 30th day of APRIL, 2003, before me appeared KEITH A. REGAN, to me personally known, who being by me duly sworn did say that he is the Director of Finance 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 Article 8, Chapter 4 of the Charter of the County of Maui; and the said KEITH A. REGAN 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.

*Jeanette R. Kinaka*  
NOTARY PUBLIC, State of Hawaii  
**JEANETTE R. KINAKA**  
(Print Name)  
My commission expires: 04-09-07

# EXHIBIT A

JAMES "KIMO" APANA  
Mayor



WESLEY P. LO  
Director of Finance

AGNES M. HAYASHI  
Deputy Director of Finance

COUNTY OF MAUI  
**DEPARTMENT OF FINANCE**  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

December 12, 2002

Mr. Charles Ridings  
Executive Director  
Maui Economic Concerns of the Community  
670 Waiale Road  
Wailuku, Hawaii 96793

Dear Mr. Ridings:

The County of Maui (the "County") is please to inform you that Maui Economic Concerns of the Community's request for a loan to finance the construction of the West Maui Resource Center (the "Project") has been approved.

The loan will be made to Maui Economic Concerns of the Community (the "Borrower"), subject to, among other things, the following terms and conditions:

**TERMS**

Loan Amount: \$4,000,000

Interest Rate during  
Construction Period:

During the Construction period, (and prior to the issuance of the Reimbursable General Obligation Bond Financing) money will be advanced from the County to the Borrower on an interest free basis.

Interest Rate after  
Construction:

Upon completion of Construction, and upon the County issuing a Reimbursable General Obligation Bond to finance advances made by the County to the Borrower in connection with this project, Interest will be assessed at an identical rate as assessed on the Bond financing.

Required Payments:

During the Construction period, (and prior to the issuance of the Reimbursable General Obligation Bond) there will be no required payments.

Mr. Charles Ridings  
December 12, 2002  
Page 2 of 4

Thereafter, upon the issuance of the Reimbursable General Obligation Bond, the required payments will be identical to the debt service payments on the Reimbursable General Obligation Bond.

The County of Maui will use its best efforts to structure the Reimbursable General Obligation Bond financing to provide for a three year principal delay and a 25 year amortization, or a structure that will be financially comparable to a three year principal delay and a 25 year amortization.

**Maturity Date:** To be determined, however, no longer than the maturity date of the Reimbursable General Obligation Bond financing.

**Prepayment Penalty:** None

**Name of Project:** Na Hale O Waince

**Property:** Approximately five acres of leasehold property and improvements located behind the Lahaina Recreation Center, Lahaina, Maui.

**Improvements:** A seven building project consisting of the following:

**One Resource Center**

Resource Center consisting of a one story wood frame building. The Resource Center will house 42 single dorm units, an administrative office, a commercial kitchen/dining room facility, classrooms and a medical clinic

**Two Homeless/Transitional Buildings**

The Homeless/Transitional Buildings are wood frame, two story walk-up's. Each building will consist of 16 units consisting of 8 studio and 8 2-bedroom units. (For a total of 32 units).

**Two Affordable Building**

The Affordable buildings are wood frame, two story walk-up's. Each Building will consist of 10 2-bedroom units (for a total of 20 units).

**One Maintenance Building**

A wood frame Maintenance Building

Mr. Charles Ridings  
December 12, 2002  
Page 3 of 4

One Laundry Building  
A wood frame Laundry facility

**Other Conditions:**

- 1) The Borrower agrees that until additional funding is received and the appropriate approvals are obtained from the County, one of the homeless/transitional buildings may be operated as an affordable building to supplement cash flow until the Borrower is able to secure additional monies to either a) subsidize operating cash flows or b) obtain additional monies to complete additional buildings that will provide for a positive operating cash flow.
- 2) The Borrower will agree not to sell or further encumber this property without consent of the County.
- 3) The Borrower will provide annual audited operating financial statements
- 4) The Borrower will provide quarterly operating statements from the project.

**Closing Date:** April 30, 2003

**Commitment Acceptance Date:** December 31, 2002

**Construction Completion Date:** December 31, 2003

**Regulatory Agreement:** The subject loan will require the execution of a Regulatory Agreement, in form and content that is substantially similar to the attached draft Regulatory Agreement.

**CONDITIONS**

1. Closing Date. Time is of the essence in the Borrower's performance of this commitment. The Borrower must accept this commitment by the Commitment Acceptance Date and all conditions must be satisfied on or before the Closing Date. If the conditions of this commitment are not satisfied on or before the Closing Date, the County may either extend the Closing Date or terminate this commitment without further obligation.

Mr. Charles Ridings  
December 12, 2002  
Page 4 of 4

2. Note. The obligation of the Borrower to repay the Loan, together with accrued interest thereon, shall be evidenced by a promissory note and/or a Loan Agreement, dated the Closing Date, duly executed and delivered to the County by the Borrower.
3. Insurance. The Borrower shall furnish to the County on or before the Closing Date, Fire and extended coverage insurance, for the full insurable value to the Improvements, fixtures and equipment, and such other insurance customarily required.
4. Approval of County and its Counsel. All documents, agreements, reports and opinions required by this commitment must be in form and substance satisfactory to the County and its counsel. If requested by the County, the Borrower shall deliver to the County on the Closing Date, an representation of Borrower's Executive Director, in form and substance satisfactory to the County.
5. Amendment. Any amendment of this commitment letter must be in writing and acceptable by both the Borrower and the County.

If the above terms and conditions are acceptable to you, please execute the form of acceptance on the enclosed copy of this letter and return the same to us.

If you have any questions, please feel free to call me at 270-7844

Sincerely,



WESLEY P. LO  
Director of Finance

Accepted by:  
Maui Economic Concerns of the Community

By:   
Its Executive Director

Date: 12/12/02

WPL:do  
enclosures

cc: Alice Lee, Director of Housing and Human Concerns, County of Maui  
Brian Moto, Deputy Corporation Counsel, County of Maui  
Traci Fujita Villarosa, Deputy Corporation Counsel, County of Maui  
Ed Okubo, Housing Division, County of Maui  
Wayne Fujita, County Treasurer, County of Maui

## EXHIBIT B

# LOAN DISBURSEMENT REQUEST

REQUEST FOR PAYMENT NO. \_\_\_\_\_ DATE: \_\_\_\_\_

PROJECT TITLE: \_\_\_\_\_

ORGANIZATION NAME: \_\_\_\_\_

TOTAL LOAN AMOUNT: \$ \_\_\_\_\_

\*TOTAL THIS REQUEST: \$ \_\_\_\_\_

TOTAL PREVIOUS REQUEST: \$ \_\_\_\_\_

UNDISBURSED LOAN BALANCE: \$ \_\_\_\_\_

DESCRIPTION OF THIS REQUEST: \_\_\_\_\_

<u>BUDGET CATEGORY</u>	<u>AMOUNT REQUESTED</u>
_____	_____
_____	_____
_____	_____
<u>TOTAL</u>	_____

COMMENTS: \_\_\_\_\_

The undersigned certifies that the work, for which disbursement is requested, was performed in accordance with the terms of the Loan Agreement of County Funds between MECC and County and the Regulatory Agreement and Declaration of Restrictive Covenants, and that the attached documents substantiating this request are true and correct copies of the original documents on file with the MECC.

\_\_\_\_\_  
Executive Director Date  
Charles H. Ridings

APPROVED FOR PAYMENT:

\_\_\_\_\_  
Housing Administrator Date  
County of Maui

\_\_\_\_\_  
Department of Housing and Date  
Human Concerns, County of Maui

FOR FINANCIAL DEPT. USE:

BATCH NO. \_\_\_\_\_

[ ] CHECK TO DHHS

DATE: \_\_\_\_\_

[ ] CHECK TO VENDOR

CHECK# \_\_\_\_\_

CONTRACT # \_\_\_\_\_ INDEX # \_\_\_\_\_ SUB-OBJECT # \_\_\_\_\_



PROMISSORY NOTE

WHEREAS, the County of Maui and Maui Economic Concerns of the Community, Inc. ("MECC"), executed a loan commitment letter, dated December 12, 2002, providing for a loan in the amount of \$4,000,000 to MECC to assist with the financing of the construction and development of a multi-family homeless resource center and rental housing project generally known as the West Maui Resource Center in Lahaina, Maui; and

WHEREAS, the County of Maui and MECC entered into a Loan Agreement of County Funds ("Loan Agreement"), dated April 30, 2003; and

WHEREAS, Section C of the Loan Agreement requires, among other things, that MECC, as borrower, cooperate with the County of Maui to complete required documents, including a promissory note setting forth the terms and conditions of loan repayment, following the issuance of general obligation bonds to refinance loan advances made by the County of Maui to MECC in connection with the West Maui Resource Center project; and

WHEREAS, the County of Maui, as Lessor, and MECC, as Lessee, entered into a Lease and a First Amendment to Lease pertaining to the lease of real property serving as the site of the West Maui Resource Center (collectively, and as may be hereafter amended, "Lease"); and

WHEREAS, the County of Maui and MECC also entered into a Regulatory Agreement and Declaration of Restrictive Covenants, dated April 30, 2003 ("Regulatory Agreement"); and

WHEREAS, on January 26, 2005, the County of Maui issued its General Obligation Bonds, 2005 Series A, 2005 Series B, and 2005 Series C (the "Bonds") in the aggregate principal amount of \$59,300,000; and

WHEREAS, \$4,005,000 of the proceeds of the Bonds are to be used to refinance the loan advances made pursuant to the Loan Agreement (\$5,000 of the \$4,005,000 representing the cost of certain legal fees incurred in the closing of the issuance of the Bonds);

NOW, THEREFORE, MECC agrees as follows:

FOR VALUE RECEIVED, MECC promises to pay to the County of Maui the principal sum of Four Million Five Thousand Dollars (\$4,005,000) and interest on the balance of principal remaining from time to time unpaid, such principal sum and interest to be payable in installments in the amounts and at the rates specified in the schedule attached hereto and made a part hereof as Exhibit "A". MECC shall pay the first principal amount due on March 1,

EXHIBIT " 2 "

2008, and shall pay subsequent principal amounts due on the first day of March of each year thereafter until March 1, 2030. MECC shall pay the first interest amount due on June 30, 2006, and shall pay subsequent interest amounts due on the thirtieth day of June of each year thereafter until June 30, 2030.

Each payment shall be applied first to pay late charges or other charges, if any, then to pay the interest then owing on the principal and the balance shall be applied to reduce the amount of principal owed under this Promissory Note.

Payments shall be made at the Department of Finance, County of Maui, 200 South High Street, Wailuku, Maui, Hawaii 96793, or at such other place as the County of Maui may from time to time in writing appoint.

In the event of default, MECC shall meet and confer with the County of Maui to resolve the default. If the default remains uncured, the County of Maui may exercise any remedy provided by law or equity, including, but not limited to, those remedies provided for in the Loan Agreement, the Lease, and the Regulatory Agreement.

MECC waives its rights to require the County of Maui to take the following actions: (a) To demand payment of amounts due ("presentment"); (b) To give notice that amounts due have not been paid ("notice of dishonor"); and (c) To obtain an official certification of nonpayment ("protest").

MAUI ECONOMIC CONCERNS OF THE  
COMMUNITY, INC.

By

  
(Signature)

Caroline Peters Belson  
(Print Name)

Its Board of Directors Chair  
(Title)

By

  
(Signature)

Charles H. Ridings  
(Print Name)

Its Executive Director  
(Title)

**BOND DEBT SERVICE**

County of Maui, Hawaii  
General Obligation Bonds, 2005 Series A  
MECC Loan (\$4 million)

\*\*Insured Market Conditions as of 1/6/05\*\*

Period Ending	Principal	Coupon	Interest	Debt Service
06/30/2005				
06/30/2006			186,183.95	186,183.95
06/30/2007			189,686.64	189,686.64
06/30/2008	115,000	2.467775%	169,686.64	284,686.64
06/30/2009	115,000	2.617775%	166,848.70	281,848.70
06/30/2010	125,000	2.917775%	163,838.26	288,838.26
06/30/2011	125,000	3.137775%	160,336.82	285,336.82
06/30/2012	125,000	3.347775%	156,369.70	281,369.70
06/30/2013	136,000	3.547775%	152,204.98	288,204.98
06/30/2014	135,000	3.667775%	147,592.88	282,592.88
06/30/2015	140,000	3.787775%	142,641.38	282,641.38
06/30/2016	145,000	3.917775%	137,338.50	282,338.50
06/30/2017	150,000	4.105775%	131,637.72	281,637.72
06/30/2018	160,000	4.216775%	125,499.06	285,499.06
06/30/2019	165,000	4.320775%	118,753.22	283,753.22
06/30/2020	170,000	4.381775%	111,622.94	281,622.94
06/30/2021	180,000	4.478775%	104,343.92	284,343.92
06/30/2022	185,000	4.546775%	96,285.74	281,285.74
06/30/2023	185,000	4.596775%	87,874.20	282,874.20
06/30/2024	205,000	4.648775%	78,918.48	283,918.48
06/30/2025	215,000	4.686775%	69,390.74	284,390.74
06/30/2026	225,000	4.721775%	59,314.18	284,314.18
06/30/2027	235,000	4.756775%	48,622.68	283,622.68
06/30/2028	245,000	4.828775%	37,369.86	282,369.86
06/30/2029	255,000	4.896775%	25,938.56	280,938.56
06/30/2030	270,000	4.871775%	13,153.80	283,153.80
	4,005,000		2,861,083.85	6,866,083.85

EXHIBIT "A"



**Ka Hale A Ke Ola Homeless Resource Centers, Inc.**

**Monique R. Yamashita**  
*Chief Executive Officer*

**February 14, 2017**

**Board of Directors**

**Steve Miller**  
*President*

**Michael Victorino**  
*Vice President*

**Dr. John Decker**  
*Secretary*

**Alec McBarnet**  
*Treasurer*

**Cathy Bio**  
**Father Gary Colton**  
**Rory Frampton**  
**Kit Hart**

**Nicole Spalding**  
**Alvin Tagomori**  
**Myrlam Tuttle**  
**Jim Worley**  
**Doug Wright**  
**Erin Lowenthal**

**Central**  
**670 Waiale Road**  
**Wailuku, HI 96793**  
**(808) 242-7600**

**Westside**  
**15 Ipu Aumakua Lane**  
**Lahaina, HI 96761**  
**(808) 662-0076**

**www.khako.org**



**Carol Reimann**

**Director of Housing and Human Concerns**  
**County of Maui**  
**2200 Main St., Ste. 546**  
**Wailuku HI 96793**

**RE: KHAKO WESTSIDE \$4.0 MILLION COUNTY LOAN**

**Dear Ms. Reimann,**

In 2002, Ka Hale A Ke Ola Homeless Resource Centers, Inc. ("KHAKO") (formerly known as Maui Economic Concerns of the Community, Inc.) partnered with the County of Maui to develop KHAKO West Side (f.k.a. Na Hale O Waihee) in response to the growing need for low income affordable housing and shelter for the homeless in West Maui.

The County provided land and construction and permanent financing in the form of a \$4 million loan, requiring interest only payments commencing in 2006, with principal and interest payments of approximately \$283,000 per year commencing in 2008.

Since its completion in 2005, this facility together with KHAKO Central shelter has operated at a loss or break even before debt service making it impossible to make payments towards the West Side Loan. Unfortunately, rent increases on the 30 affordable housing units did not materialize as projected, while operating expenses exceeded those assumed. Additionally, much of the revenue from the West Side Affordable housing was used to cover operating expenses for the homeless shelter on the West Side property.

Over the past several years, major expense reductions and management changes were made to bring KHAKO's finances back into the black. Additionally, we have successfully negotiated more favorable repayment terms with the Hawaii Housing Finance & Development Corporation for KHAKO's \$3 million construction loan for Hale Makana O Waiale.

In an effort to fully resolve the agency's finances, KHAKO wishes to address repayment of the Westside \$4 million County loan. KHAKO respectfully proposes making payments of \$100,000 per year, on a semi-annual or quarterly basis, and to restate the principal amount to include the accrued interest, effective as soon as approved by the County Council. We would also request that the revised principal amount cease accruing further interest.

**EXHIBIT ' 3 '**

Enclosed for your review is a copy of the 2015 Audited Financial Statement for KHAKO. We will also offer our 2016 Audited Financial Statement as soon as it's completed.

If approved, this proposed restructuring of the Westside loan would significantly improve KHAKO's balance sheet by converting what is currently shown as current debt to a long term obligation as initially intended, and will remove the going concern comment mentioned by the auditors in our annual financial statements. This endeavor to improve the financial health of the organization will help to facilitate KHAKO's long term objective of fundraising from the private sector as well as other public sector sources.

We look forward to working in partnership with the County of Maui in our joint mission to provide low income affordable housing and shelter to those in need. Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, reading "Monique R. Yamashita". The signature is fluid and cursive, with the first name being the most prominent.

Monique R. Yamashita  
Chief Executive Officer

Cc: Steve Miller, Board President  
Thanald Uralwong, CFO