

# REQUEST FOR LEGAL SERVICES

**D a t e:** October 17, 2018  
**F r o m:** Riki Hokama, Chair  
Budget and Finance Committee


TRANSMITTAL

**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Jeffrey Ueoka, Esq.

**Subject:** FRONT STREET APARTMENTS, LAHAINA, MAUI (BF-150)

**Background Data:** Revise proposed bill as indicated on the attached marked-up copy. An original hardcopy is required.

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

Requestor's signature  Riki Hokama	Contact Person <u>Michele Yoshimura</u> (Telephone Extension: <u>7663</u> )
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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): Monday, October 22, 2018  
REASON: For posting on Friday, October 26, 2018 for the November 2, 2018 Council meeting.

## FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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 \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

bf:ltr:150acc01:mmy

Attachment

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2018)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR  
OF THE COUNTY OF MAUI TO ENTER INTO AN  
INTERGOVERNMENTAL AGREEMENT WITH THE HAWAII HOUSING  
FINANCE AND DEVELOPMENT CORPORATION RELATING TO THE FRONT  
STREET APARTMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

*state of Hawaii,*  
SECTION 1. Purpose. The <sup>✓</sup>Hawaii Housing Finance and Development Corporation ("HHFDC") and the County of Maui ~~through its Department of Housing and Human Concerns~~ <sup>✓</sup> desire to enter in Memorandum of Agreement ("MOA"), attached hereto and incorporated herein as Exhibit "A", relating to the Front Street Apartments.

Front Street Apartments located adjacent to Kenui Street and Wainee Street, Lahaina, Maui, Hawaii consists of 142 affordable housing units and related structures, totaling six buildings on 8.538 acres of land, and situated on property identified by tax map key (2) 4-5-003:013.

<sup>T</sup> The Hawaii State Legislature ~~(the "Legislature")~~ <sup>✓</sup>, pursuant to section 1 of AC~~§~~ 150, Session Laws of Hawaii 2018 ~~("Act 150")~~ <sup>✓</sup>, authorizes HHFDC to institute proceeds for the condemnation of the ground lease for the Front Street Apartments affordable housing project. <sup>✓</sup>


County of Maui's Budget and Finance Committee approved a budget amendment to add an appropriation out of the Affordable Housing Fund to provide for the County's matching funds for the ~~Project.~~ *appraisal and other preparations for the condemnation of the ground lease for the Front Street Apartments affordable housing project.*

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JEFFREY UEOKA  
Deputy Corporation Counsel  
County of Maui  
2018-1212  
2018-09-28 Ord IGA

MEMORANDUM OF AGREEMENT  
BETWEEN THE  
HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION  
AND THE  
COUNTY OF MAUI

This Memorandum of Agreement ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 2018, by and between the Hawaii Housing Finance and Development Corporation, a public body and body corporate and politic of the State of Hawaii ("HHFDC"), and the County of Maui ("County"), a political subdivision of the State of Hawaii, through its Mayor (collectively, "the Parties").

WITNESSETH:

WHEREAS, Front Street Apartments, located in Lahaina, Maui, Hawaii, was developed by Front Street Affordable Housing Partners (the "Partners") as an affordable housing project consisting of 142 units reserved for families earning 50% (70 units) and 60% (71 units) or less of the area median income (AMI). More than \$40 million in public resources was invested in developing the Project, including millions in low income housing tax credits (LIHTC) allocated by HHFDC. In return, the project was subject to remain affordable for a period of 50 years.

WHEREAS, after 15 years, in accordance with section 42 of the Internal Revenue Code (IRC), the Partners became eligible and applied for a Qualified Contract from HHFDC. Under the Qualified Contract process, the allocating agency has one year to find a buyer to enter into a Qualified Contract to purchase and maintain operation of the property as a LIHTC affordable housing project. If a qualified buyer is not secured within that time, the affordability restrictions on the project terminate. The Partners applied for a Qualified Contract in 2015. The deadline for finding a qualified buyer expired in 2016. Since no Qualified Contract was executed, the Partners retained ownership of the project and intend to terminate the affordability restrictions by 2019.

WHEREAS, the need for affordable housing in Hawaii is at an all-time high, making opportunities for not just creating but also preserving existing affordable housing critical and in the public interest.

WHEREAS, the Hawaii State Legislature (the "Legislature"), pursuant to section 1 of Act 150, Session Laws of Hawaii 2018 ("Act 150"), authorized HHFDC to "institute proceedings for the condemnation of the ground lease for the Front Street Apartments affordable housing project".

WHEREAS, the Legislature, pursuant to section 2 of Act 150, authorized an appropriation out of the general revenue fund "of \$250,000 or so much thereof as may be necessary for fiscal year 2018-2019 for an appraisal and other preparations for instituting the condemnation proceedings under section 1; provided that no funds authorized pursuant to this section shall be made available unless the county of Maui provides dollar-for-dollar matching funds."

WHEREAS, the County of Maui's Budget and Finance Committee approved a budget amendment to add an appropriation out of the Affordable Housing Fund to provide for the County's matching funds for the Project.

WHEREAS, the proposed bill states that "\$250,000 shall be the County's match for the appraisal and other preparations for the condemnation of the ground lease for the Front Street Apartments affordable housing project. Funds shall not be expended until the Hawaii Housing

EXHIBIT "A"

Finance and Development Corporation provides dollar-for-dollar matching funds and the County and the Hawaii Housing Finance and Development Corporation have entered into a Memorandum of Agreement detailing the terms of the County's financial obligation."

WHEREAS, the Legislature designated the HHFDC as the expending agency for the Appropriation.

WHEREAS, Section 2 of Act 150 states that no funds shall be made available unless the County of Maui provides dollar-for-dollar matching funds.

WHEREAS, unless funds are encumbered, the Appropriation is scheduled to lapse on June 30, 2019.

NOW, THEREFORE, the Parties mutually agree as follows:

1. Purpose. The purpose of this Agreement is to encumber the Appropriation and fulfill the Legislature's intent to preserve affordable housing by condemning the ground lease of the Front Street Apartments (the "Project," which refers collectively to all activities required to complete an appraisal and other preparations for instituting condemnation proceedings of the ground lease of the Front Street Apartments).

2. Scope, Obligations, and Conditions. Upon execution of this Agreement, to encumber the Appropriation authorized by Section 2 of Act 150, the County shall pay to HHFDC the full amount of \$250,000 designated as matching funds ("Match Funds").

HHFDC shall perform the following tasks:

- A. Obtain the necessary approvals to encumber the Appropriation.
- B. Hold the Match Funds provided by the County in a restricted account of the Dwelling Unit Revolving Fund ("DURF") to be used exclusively for the Project.
- C. Provide oversight and management of the Project, including the procurement of any goods or services in accordance with Chapter 103D, Hawaii Revised Statutes.

Any expenses paid out of the Match Funds shall amount to no more than 50-percent of the total cost of the expenses. Since the Project is being funded by both HHFDC and the County, any procurements paid for with the Appropriation and Match Funds may be subject to cooperative purchasing approval from the respective Chief Procurement Officers of the State of Hawaii and the County. HHFDC will be responsible for securing any such required procurement approvals provided that the County shall assist HHFDC in expediting, and agree to any such approvals as needed.

If the total cost of the Project is less than the total of the Appropriation and Match Funds available to pay for the Project, the remaining Match Funds, if any, will be returned to the County upon completion of the Project. HHFDC, in its sole discretion, shall determine when the Project is complete.

Use of the Match Funds from DURF funds under this Agreement shall be subject to HHFDC Board of Directors approval, release of funds by the Governor, and availability of DURF funds.

3. Best Efforts. Each party will use its best efforts to take all actions and to do all things necessary, proper, or advisable to consummate, make effective and comply with all terms of this Agreement.

4. Term. This Agreement shall be effective as of the date listed above and shall continue until such time that the Parties determine that the objectives of this Agreement have been fulfilled, unless sooner terminated as provided herein.

5. Notices. Any written notice required to be given by any party to this Agreement shall be (1) delivered personally, or (b) sent by United States first class mail, postage prepaid. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Parties are responsible for notifying each other in writing of any change of address.

Notice to HHFDC shall be addressed to:

Craig K. Hirai, Executive Director  
Hawaii Housing Finance and Development Corporation  
677 Queen Street, Suite 300  
Honolulu, Hawaii 96813

Notice to County shall be addressed to:

William Spence, Director  
Department of Housing and Human Concerns  
County of Maui  
2200 Main Street,  
Suite 546  
Wailuku, HI 96793

6. Termination of Agreement.

- A. Either party may terminate this Agreement with sixty (60) days' prior written notice to the other party.
- B. Upon termination of this Agreement, HHFDC and County shall be released from any further obligations hereunder.

7. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

8. Waiver. The failure of either party to enforce, or the granting of a waiver of, any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

9. Amendment. This Agreement may be modified, amended or extended only by mutual written agreement signed by both Parties.

10. Applicable Law. This Agreement shall be governed by the laws of the State of Hawaii.

11. Counterparts. This Agreement may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

**IN VIEW OF THE ABOVE**, HHFDC and County execute this Agreement by their signatures, on the dates below, to be effective as of the date first above written.

County of Maui

Hawaii Housing Finance and Development Corporation

\_\_\_\_\_  
Alan M. Arakawa  
Mayor

\_\_\_\_\_  
Craig K. Hirai  
Executive Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

Approved as to Form and Legality:

Approved as to Form:

  
\_\_\_\_\_  
Deputy Corporation Counsel

\_\_\_\_\_  
Deputy Attorney General

Approval Recommended:

\_\_\_\_\_  
Mark R. Walker, Director  
Department of Finance