

REQUEST FOR LEGAL SERVICES

D a t e: February 12, 2024
F r o m: Yuki Lei K. Sugimura, Chair
Budget, Finance, and Economic Development Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Kristina C. Toshikiyo, Esq.

Subject: BILL 6 (2024), AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE UNIVERSITY OF HAWAII, ON THE HAWAII BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM INITIAL PLANNING FUNDS (BFED-70)

Background Data: Please see attached bill and mark-up of the bill attachment. Please incorporate the revisions to the attachment and transmit it with the signed bill to bfed.committee@mauicounty.us.

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

Requestor's signature  Yuki Lei K. Sugimura	Contact Person <u>James Krueger or Kasi Apo Takayama</u> (Telephone Extension: <u>7761 or 7665, respectively</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): February 16, 2024
REASON: For posting for the February 28, 2024, 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)

ORDINANCE NO. _____

BILL NO. 6, CD1 (2024)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF
THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE UNIVERSITY OF HAWAII REGARDING THE HAWAII
BROADBAND EQUITY, ACCESS, AND DEPLOYMENT (BEAD) PROGRAM
INITIAL PLANNING FUNDS

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

SECTION 1. Purpose. The University of Hawaii (“University”) has been tasked with leading the State of Hawaii to build out a robust, reliable, and affordable fiber broadband infrastructure to every community and guarantee accessibility for every resident. The University will provide funds to the County in the amount of \$100,000, with the potential for additional funding, if necessary, to conduct community outreach and engagement throughout the County to better identify and understand the community’s technology priorities and needs. The University and the County will create an Outreach Plan to be incorporated into a Five-Year Action Plan to establish the goals and priorities for the State relating to the implementation of the Broadband Equity, Access, and Deployment (BEAD) Program as more fully described in the Memorandum of Agreement (“Agreement”), attached as Exhibit “1.”

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

SECTION 2. Council Authorization. In accordance with Section 2.20.020, Maui County Code, the Council of the County of Maui authorizes the Mayor or the Mayor's authorized representative to execute the Agreement, all necessary documents relating to the Agreement, and amendments to the Agreement.

SECTION 3. Effective date. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Kristina C. Toshikiyo
Deputy Corporation Counsel
County of Maui

bfed:misc:070abill01:jgk

EXHIBIT "1"

MEMORANDUM OF AGREEMENT

UNIVERSITY OF HAWAII AND COUNTY OF MAUI

REGARDING SUPPORT AND IMPLEMENTATION OF THE HAWAII BROADBAND, EQUITY, ACCESS, AND DEPLOYMENT (BEAD) INITIAL PLANNING FUNDS PROGRAM

I. This Memorandum Of Agreement ("MOA") is entered into this ___ day of _____, ~~2023~~ 2024 between the UNIVERSITY OF HAWAII (UNIVERSITY), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("COUNTY"), ~~and together with the UNIVERSITY, the "PARTIES".~~ collectively

RECITALS

WHEREAS, the UNIVERSITY has been tasked with leading the State of Hawaii ("STATE") to build out a robust, reliable, and affordable broadband infrastructure to every community and guarantee accessibility for every resident;

WHEREAS, the UNIVERSITY'S work on infrastructure elements will be closely accompanied by thoughtfully implemented digital equity programs to promote the necessary digital skills development for residents, enhancement of our local workforce, and stimulation and diversification of ~~our state's~~ STATE's economy;

WHEREAS, the COUNTY's mission is to prioritize and support digital equity to ensure individuals and communities have affordable access to computer devices, high-speed internet, and the knowledge and skills to use them effectively; ~~Delete "," and insert "and"~~

WHEREAS, community outreach and engagement at the county level helps better identify and understand the community's technology priorities and needs, fosters support for ensuring every community can access high-speed internet, includes diverse expertise and experiences from those most impacted by the digital divide, encourages transparency which builds trust, and establishes a feedback mechanism to capture additional input necessary for subsequent detailed planning and implementation efforts; and

WHEREAS, it is of mutual interest and advantage to the PARTIES to collect and analyze community data and input in order to develop and implement a successful plan to achieve internet access and digital literacy skills for all of ~~Hawaii's~~ the STATE's residents.

NOW THEREFORE, in consideration of the foregoing and mutual promises and covenants contained in this MOA, the PARTIES agree as follows:

1. COUNTY will be responsible for:

A. Working with ~~the~~ UNIVERSITY to create a detailed Outreach Plan, to be incorporated into the Five-Year Action Plan. The Five-Year Action Plan, written by ~~the~~ UNIVERSITY, establishes the goals and priorities for the State relating to broadband and implementation of the Broadband Equity, ~~Access, and Deployment~~ ~~And Development~~ (BEAD) Program, ~~is~~ required by the National Telecommunications and Information Administration (NTIA), and was due on July 29, 2023. The Outreach Plan will define activities, tactical strategies of engagement, a timeline, and measurements. The Outreach Plan was finalized and submitted by July 15, 2023. The Outreach Plan shall be updated ~~on~~ by the County at least every 6 months to include any additional unanticipated activities.

Delete "," and insert "." The Five-Year Action Plan"

B. Implementing the Outreach Plan with adjustments to the plan that reflect ongoing feedback from government and community partners. ~~Including but not limited to~~ (1) Community meetings and events (2) Project communications, and (3) Media outreach and engagement. The activities shall inform the county-wide population of the State's broadband efforts, and shall ensure that the project has broad and diverse community inputs to inform the most inclusive planning, design, and implementation efforts supported by the public funds.

Delete "." and insert ","

Lowercase
Delete hyphen

Lowercase
Delete ","

C. Meet monthly with the ~~UH~~ UNIVERSITY broadband team to provide progress reports and updates. Monthly written reports shall include ~~but not be limited to~~ spending, activities, data, and other qualitative metrics on community engagement activities. ~~Including but not limited to~~ information included in ATTACHMENT A.

Delete "." and insert ","

Lowercase

the

D. Provide support as needed, requested, and agreed upon in writing.

E. Expend the ~~one hundred thousand~~ (\$100,000) provided by UNIVERSITY in accordance with the guidelines set forth by the NTIA for the BEAD program (ATTACHMENT B - pg. 24-25), terms and conditions applicable to contract and purchase orders under federal grants (ATTACHMENT C), Federal, UNIVERSITY University of Hawaii, state and County statutes, rules and regulations. With the understanding that additional funding may be received by ~~the~~ COUNTY if agreed upon by both parties.

Delete "." and insert ","

Lowercase

2. ~~The~~ UNIVERSITY will be responsible for:

- A. Providing ~~the~~ COUNTY the sum of ~~one hundred thousand dollars~~ (\$100,000) to be expended for the purposes outlined in this ~~AGREEMENT~~. Additional funding may be provided to ~~the~~ COUNTY if agreed upon by ~~both parties~~. MOA
the PARTIES.
 - B. Overseeing and coordinating statewide broadband implementation efforts funded by multiple Federal programs to ensure all of ~~Hawaii's~~ citizens have access to robust, reliable, and affordable internet services. STATE's
 - C. Acting as the liaison between the stakeholders including ~~(1)~~ Federal, ~~(2)~~ State, ~~(3)~~ Counties, and ~~(4)~~ other organizations and nonprofits. Lowercase
 - D. Providing materials and messages that can be used for community engagement activities, including attending community engagement activities, supporting statewide messaging efforts, and ~~access to~~ Salesforce Marketing Cloud. providing
 - E. Monitoring and providing regular reporting and status updates as required to ~~the State of Hawaii~~ Department of Budget and Finance. STATE
 - F. Provide support as needed, requested, and agreed upon in writing.
 - G. Except as otherwise provided by law, any action taken by ~~the~~ COUNTY to implement its responsibilities under the MOA shall be within COUNTY's sole discretion.
 - H. In the event that any provision of this MOA or the application ~~thereof~~ to any person or circumstance is held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect the validity of this MOA as a whole or the validity of any remaining provision or application ~~thereof~~ which can be given effect without the invalid, illegal, or unenforceable provision or application, and to this end, the provisions of this MOA are severable. of the MOA
of the MOA
3. This MOA shall be in force until December 31, 2024; provided that either party may terminate this MOA by providing thirty ~~(30)~~ days written notice to the other party. This MOA may be extended by mutual written agreement for three ~~(3)~~ additional ~~(1)~~ year periods. one

[EXECUTION PAGE TO FOLLOW]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the ~~parties hereto~~ ^{PARTIES} have executed the Memorandum of Agreement per the below signatures:

By:

Garret T. Yoshimi 1/11/2024
(Signature) (Date)

Garret Yoshimi
Vice President for Information
Technology/CIO
University of Hawai'i System

(Signature) (Date)

Richard T. Bissen, Jr
Mayor
County of Maui

Approved as to form and legality:

Kristina C. Toshikiyo
Deputy Corporation Counsel
County of Maui

- ATTACHMENT A
- ATTACHMENT B
- ATTACHMENT C

ATTACHMENT A

Reporting Requirements: via google form

1. Spending - University of Hawaii Agreement for Services
2. Engagement Title/Description
3. Engagement Date
4. Engagement Location
 - a. Street Address
 - b. City
 - c. Zip-5
5. Target Audience
6. # Engaged*
7. Audience Reached: (include all that apply)*
 - a. Individuals who live in unserved locations - broadband-serviceable location that the FCC National Broadband ~~Broadband~~ DATA Maps show as (a) having no access to broadband service, or (b) lacking access to Reliable Broadband Service offered with - (i) a speed of less than 25 Mbps for downloads; ~~and~~ (ii) a speed of less than 3 Mbps for uploads; and (iii) latency greater than or equal to 100 milliseconds (NOFO Section I.C.dd).
 - b. Individuals who live in underserved locations - broadband-serviceable location that is (a) not an unserved location, and (b) that the FCC National Broadband DATA Maps show as lacking access to Reliable Broadband Service offered with - (i) a speed of not less than 100 Mbps for downloads; ~~and~~ (ii) a speed of less than 20 Mbps for uploads; and (iii) latency greater than or equal to 100 milliseconds (NOFO Section I.C.bb).
 - c. Individuals who live in covered households - The term “covered household” means a household, the income of which for the most recently completed year is not more than 150 percent of an amount equal to the poverty level, as determined by using criteria of poverty established by the Bureau of the Census.
 - d. Aging Individuals - The term “aging individual” means an individual who is 60 years of age or older.
 - e. Incarcerated Individuals, other than individuals who are incarcerated in a Federal correctional facility.
 - f. Veterans - The term “veteran” means a person who served in the active military, naval, air, or space service, and who was discharged or released therefrom under conditions other than dishonorable.
 - g. Individuals with Disabilities - The term “disability” means, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities of such an individual; a record of such an impairment; or Being regarded as having such an impairment.
 - h. Individuals with a language barrier, including ~~are~~ ^{individuals who} English learners; and have low levels of literacy. ← Lowercase
 - i. Individuals who are members of a racial or ethnic minority group.
 - j. Individuals who primarily reside in a rural area - The term “rural area” means any

area other than - a city or town that has a population of greater than 50,000 inhabitants; any urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants; and in the case of a grant or direct loan, a city, town, or incorporated area that has a population of greater than 20,000 inhabitants.

8. Attendee list*
9. Agenda
10. Event Debrief/summary including follow-up items

*Best effort to collect information with the understanding there may be cases where attendees may wish to not disclose information or walk-in individuals may be missed.

ATTACHMENT B

NTIA - Notice of Funding Opportunity (NOFO)

<https://broadbandusa.ntia.doc.gov/sites/default/files/2022-05/BEAD%20NOFO.pdf>

1. Research and data collection, including initial identification of unserved locations and underserved locations consistent with the rules, regulations, and processes the Commission has established for making these determinations in the Broadband DATA Maps; Define "Commission"
2. The development of a preliminary budget for pre-planning activities;
3. Publications, outreach, and communications support related to broadband planning, deployment, mapping, equity and adoption;
4. Providing technical assistance to potential subgrantees, including through workshops and events;
5. Training for employees of the broadband program or office of the Eligible Entity or employees of political subdivisions of the Eligible Entity, and related staffing capacity or consulting or contracted support to effectuate the goals of the BEAD Program; Define "Eligible Entity"
6. Establishing, operating, or increasing capacity of a broadband office that oversees broadband programs and broadband deployment in an Eligible Entity;
7. Asset mapping across the Eligible Entity to catalogue broadband adoption, affordability, equity, access and deployment activities occurring within the Eligible Entity;
8. Conducting surveys of unserved, underserved, and underrepresented communities to better understand barriers to adoption;
9. Costs associated with meeting the local coordination requirements in Section IV.C.1.c of this NOFO, including capacity building at the local and regional levels or contracted support;
10. Reasonable post-NOFO, pre-Initial Planning Funds expenses in an amount not to exceed \$100,000 relating to the preparation of program submissions to NTIA (such as the Letter of Intent) or adding additional capacity to State or Territorial broadband offices in preparation for the BEAD Program may be reimbursed if they are incurred after the publication date of this NOFO and prior to the date of issuance of the grant award from NTIA;27 and Is this correct?
11. Other uses approved in advance writing by the Assistant Secretary (including in response to an Eligible Entity's request) that support the goals of the Program.

**TERMS AND CONDITIONS
APPLICABLE TO CONTRACTS AND PURCHASE ORDERS (UNDER FEDERAL GRANTS)**

The following requirements only apply if they are applicable to the purchase:

1. **ANTI-KICKBACK ACT (40 U.S.C. 3145).** For construction or repair projects in excess of \$2,000, the contractor/subcontractor/vendor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States).
2. **DAVIS-BACON ACT, AS AMENDED (40 U.S.C. 3141-3148).** For construction projects in excess of \$2,000, the contractor/subcontractor/vendor shall comply with the Davis-Bacon Act (40 U.S.C. 3141-3144 and 3146-3148), as supplemented by Department of labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
3. **CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (40 U.S.C. 3701-3708).** For all projects in excess of \$100,000 that involve the employment of mechanics or laborers, the contractor/subcontractor/vendor shall comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
4. **RIGHTS TO INVENTIONS.** If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2(a), and the contractor/subcontractor enters into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement", the contractor/subcontractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements", and implementing regulations issued by the awarding agency.
5. **ANTI-LOBBYING (31 U.S.C. 1352).** If this purchase is more than \$100,000, the contractor/subcontractor/vendor (each tier) must certify that it will not or has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee or any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). The contractor/subcontractor/vendor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
6. **DEBARMENT AND SUSPENSION.** In accordance with Executive Orders (EO) 12549 and 12689, "Debarment and Suspension," a purchase of more than \$25,000 must not be made from a contractor/subcontractor/vendor that is debarred, suspended, or proposed for debarment. For purchases of more than \$25,000, the contractor/subcontractor/vendor shall certify that it is or is not debarred, suspended, or proposed for debarment by the Federal Government or the project shall check the System for Award management (SAM) at <https://www.sam.gov/SAM/>. Recipients shall fully comply with the requirements stipulated in Subpart C of 45 CFR 620, entitled "Responsibilities of Participants Regarding Transactions". The recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 45 CFR 620, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. The recipient is also responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transaction. The recipient acknowledges that failing to disclose the information required under 45 CFR 620.335 may result in the termination of the award, or pursuance of other available remedies, including suspension and debarment.
7. **EQUAL EMPLOYMENT OPPORTUNITY.** Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
8. **CLEAN AIR ACT (42 U.S.C. 7401-7671q) and the FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED.** For contracts and subgrants of amounts in excess of \$150,000, the recipient shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
9. **RIGHT TO AUDIT.** For all negotiated purchases of more than \$150,000, the contractor/subcontractor/vendor agrees that RCUH, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to and the right to examine any pertinent books, documents, papers and records of such contractor/subcontractor/vendor involving transactions related to this purchase.
10. **TRAFFICKING IN PERSONS.** For subawards (pursuant to 22 U.S.C. 7104(g)), the subrecipient shall comply with the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104), as implemented by 2 CFR 175.
11. **TERMINATION FOR CAUSE (VIOLATION/BREACH) OR CONVENIENCE OF RCUH.** For all purchases in excess of \$10,000, if a termination clause indicating RCUH's ability to terminate for cause and convenience is not included as part of the terms or contract associated with the purchase, [clause 18](#) of RCUH Attachment 31 (General Terms and Conditions Applicable to All Purchase Orders) shall apply to the purchase.
12. **PROCUREMENT OF RECOVERED MATERIALS.** All contractors/subcontractors/vendors must comply with 2 CFR § 200.323.
13. **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.** All contractors/subcontractors/vendors must comply with 2 CFR § 200.216.
14. **DOMESTIC PREFERENCES FOR PROCUREMENTS.** All contractors/subcontractors/vendors must comply with 2 CFR § 200.322.

BFED Committee

From: BFED Committee
Sent: Monday, February 12, 2024 5:56 PM
To: CorpCounselRFLS@co.maui.hi.us
Cc: BFED Committee
Subject: (OCS) (BFED-70); reply by 02/16/2024
Attachments: 070acc01_revised YLS signed.pdf; 070abill01revisions.docx