

ORDINANCE NO. _____

BILL NO. 127 (2023)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF
MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE
STATE OF HAWAII FOR THE LEASE OF THE MAUI BUS TRANSIT HUB
PROPERTY

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

SECTION 1. Purpose. The County of Maui ("County") and the Hawaii Housing Finance and Development Corporation of the State of Hawaii ("State of Hawaii") wish to enter into an intergovernmental agreement for the lease of a portion of Tax Map Key No. (2) 3-7-004: 003 at 153 West Kaahumanu Avenue (along Vevau Street), Kahului, Maui, Hawaii, more particularly described in Exhibit "A" attached hereto, for bus transit hub purposes for a term of sixty-five years (the "Lease") attached hereto as Exhibit "B", in accordance with the Memorandum of Understanding, dated December 24, 2018, attached hereto as Exhibit "C". Under the Lease, the County would pay rent in the amount of \$1.00 per year to the State for the duration of the agreement.


The Lease would be mutually beneficial because the County would be able to continue to serve the residents and visitors of Maui through the use of the new transit hub for the Maui Bus program. The new transit hub would also provide connectivity to the adjacent State mixed-use project that is anticipated to include multi-family affordable rental housing, office space, and parking.

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 Lease, all other necessary documents relating to the Lease, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval. All action heretofore taken, not inconsistent with the provisions of this ordinance, is hereby ratified, approved and affirmed.

APPROVED AS TO FORM
AND LEGALITY:

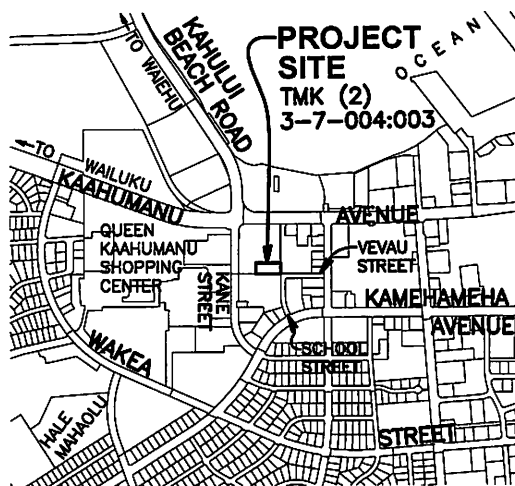


YUKARI MURAKAMI
Deputy Corporation Counsel
County of Maui
LF2022-0719
2023-03-14 Ord Auth Maui Bus Hub Lease IGA.docx

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Chris R. Lee", written over a horizontal line.

Upon the request of the Mayor.



MAP SHOWING TRANSIT HUB AREA

BEING A PORTION OF KAHULUI MIXED USE PROJECT SITE, C.S.F. 25,731, BEING ALSO A PORTION OF GRANT 3343 TO CLAU SPRECKELS

KAHULUI, WAILUKU, MAUI, HAWAII

SCALE: 1 IN.=50 FT.

DATE: MAY 2, 2023

PREPARED FOR:

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, HAWAII 96793

PREPARED BY:

FUKUMOTO ENGINEERING, INC.
1721 WILI PA LOOP, SUITE 203
WAILUKU, HAWAII 96793

OWNERS:

STATE OF HAWAII
HAWAII HOUSING FINANCE &
DEVELOPMENT CORP.

PROPERTY ADDRESS

153 W. KAAHUMANU AVENUE
KAHULUI, HAWAII 96732



VICINITY MAP

GRAPHIC SCALE IN FEET

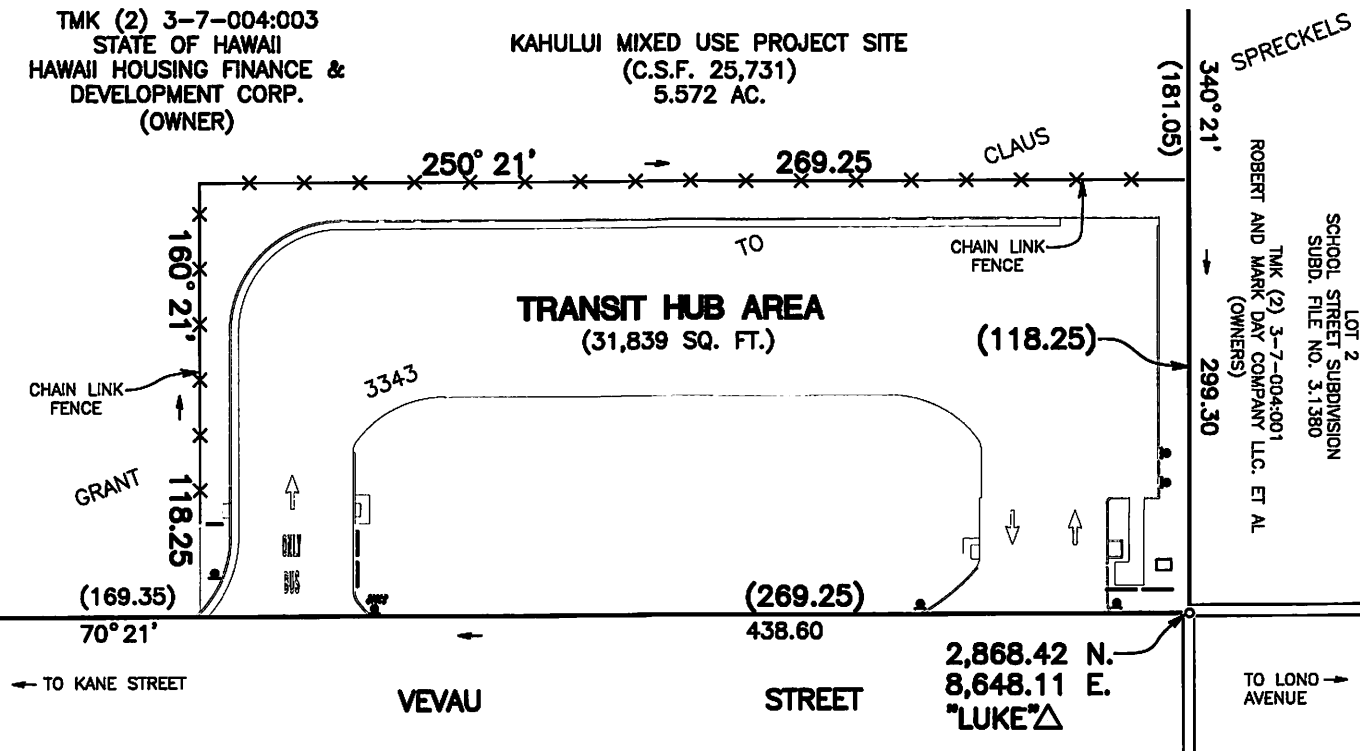
NORTH 0 1000 2000 4000

NOTES:

1. ALL AZIMUTHS AND RECORD COORDINATES REFER TO GOVERNMENT SURVEY TRIANGULATION STATION "LUKE"Δ.
2. OWNERS OF ADJOINING PARCELS ARE FROM RECORDS IN THE TAX MAPS BRANCH.

TMK (2) 3-7-004:003
STATE OF HAWAII
HAWAII HOUSING FINANCE &
DEVELOPMENT CORP.
(OWNER)

KAHULUI MIXED USE PROJECT SITE
(C.S.F. 25,731)
5.572 AC.



TRANSIT HUB AREA

GRAPHIC SCALE IN FEET

NORTH 0 25 50 100

TAX MAP KEY (2) 2-6-005:001

EXHIBIT "A-1"

DESCRIPTION

TRANSIT HUB AREA

Affecting a portion of the Kahului Mixed Use Project Site, C.S.F. 25,731, as described in Executive Order No. 4590 dated August 9, 2019, the same being portions of Block E, Block L, and Third Street of Kahului Townsite, File Plan 21, being also a portion of Grant 3343 to Claus Spreckels, situated at Kahului, district of Wailuku, Island and County of Maui, State of Hawaii.

Beginning at the Southeastern corner of the Kahului Mixed Use Project Site along the Northerly side of the intersection of Vevau (Fourth) Street and School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being:

2,868.42 feet North

8,648.11 feet East

and running by azimuths measured clockwise from True South:

1. 70° 21' 269.25 feet along the Northwestern side of Vevau (Fourth) Street;
2. 160° 21' 118.25 feet along the remainder of Kahului Mixed Use Project Site, C.S.F. 25,731, being also the remainder of Grant 3343 to Claus Spreckels;
3. 250° 21' 269.25 feet along same;
4. 340° 21' 118.25 feet along Lot 2 of School Street Subdivision (Subdivision File Number 3.1380), being also the remainder of Grant 3343 to Claus Spreckels to the point of beginning and containing an area of 31,839 Square Feet.

This work was prepared by me
or under my supervision.

FUKUMOTO ENGINEERING, INC.



A handwritten signature of Michael E. Silva, consisting of a stylized "M" followed by "Silva".

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
May 2, 2023

Michael E. Silva
Licensed Professional Land Surveyor
License Number 12,960
License Expires: 4/30/24

Return by Mail () Pickup () To:

Land Court () Regular (X) Double ()

Hawaii Housing Finance and Development Corporation
677 Queen Street, Suite 300
Honolulu, Hawaii 96813
Attention: Stanley S. Fujimoto, Project Manager

Total pages _____

TYPE OF DOCUMENT: Ground Lease
Maui Bus Hub, Kahului Civic Center Mixed-Use Complex

PARTIES TO DOCUMENT:

Lessor: Hawaii Housing Finance and Development Corporation, a public
body and a body corporate and politic of the State of Hawaii
Lessee: County of Maui, a political subdivision of the State of Hawaii

PROPERTY DESCRIPTION

DOCUMENT NO.

DOCUMENT NO.
TRANSFER CERTIFICATE OF
TITLE NO:

TAX MAP KEY NO. (2) 3-7-004: 003 (portion of)

GROUND LEASE
MAUI BUS HUB
KAHULUI CIVIC CENTER MIXED-USE COMPLEX

THIS INDENTURE ("Lease"), made this _____ day of _____, 20____, ("Effective Date") by and between the **HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION**, a public body and a body corporate and politic of the State of Hawaii, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, ("Lessor"), and **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, Hawaii, 96793 ("Lessee");

W I T N E S S E T H:

WHEREAS, the State of Hawaii is the owner in fee simple of the parcel of land at 153 West Kaahumanu Avenue, Kahului, Maui, Hawaii, totaling approximately 5.572 acres, Tax Map Key No. (2) 3-7-004: 003.

WHEREAS, Tax Map Key No. (2) 3-7-004: 003 was set aside to Lessor by Executive Order No. 4590 dated July 29, 2019, for development of a mixed-use project consisting of multi-family affordable rental housing, office space/civic center, parking, new Maui bus hub and other incidental uses purposes ("Kahului Civic Center Mixed-Use Complex"), and recorded at the State of Hawaii Bureau of Conveyances as Document No. _____.

WHEREAS, Lessee is desirous of leasing a portion of Tax Map Key No. (2) 3-7-004: 003 at Vevau Street for bus transit hub purposes.

NOW, THEREFORE, the Lessor for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises at Kahului, District of Wailuku, Island and County of Maui, State of Hawaii, being a portion of the Kahului Civic Center Mixed-Use Complex, more particularly described in Exhibit "A" which are attached and incorporated by reference (the "premises" or the "Leased Land").

It being expressly understood and agreed by Lessee that, except as provided in Sections 9 and 43, and except for any electrical facilities installed by Hawaiian Electric, Lessor is the owner of all buildings and real property improvements and fixtures which are now or hereafter situated on such land described in Exhibit "A".

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of: Sixty-Five (65) years, commencing on the Effective Date, up to and including the _____ day of _____, 20____, unless sooner terminated as hereinafter provided, for bus transit hub purposes, the Lessor reserving and the Lessee yielding and paying to the Lessor at the

office of the Lessor,

A base lease rent of \$1.00 per year for the full term of the Lease shall be payable in advance in a lump sum payment of SIXTY-FIVE AND NO/100 DOLLARS (\$65.00) upon the execution of this Lease.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and Waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxite clay, diaspore, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Prehistoric and Historic Remains. All prehistoric and historic remains found on the premises.

3. Easements to Maui Electric Company, Limited ("MECO"). Easements to MECO, including, but not limited to, easements for Lessee's participation in MECO's Charge Up eBus Pilot project.

4. Subdivision of the Premises. Subdivision of the premises at any time. If the subdivision of the premises occurs after the creation of the condominium property regime of the premises as provided in Section 42, the condominium property regime of the premises will be concurrently cancelled with the execution of a new ground lease for the subdivided premises substantially consistent with the remaining term of the condominium lease.

THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS
FOLLOWS:

1. Payment of Rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this Lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. [Reserved]

3. Utility Services. The Lessee shall pay when due all charges, duties and rates of every description, including electricity, water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee, excluding any utility charges contracted directly by the residential and retail commercial tenants.

4. Covenant against Discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition as comparable residential developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements.

6. Waste and Unlawful, Improper or Offensive Use of Premises. The Lessee shall be responsible for the maintenance of the premises during the term of this Lease and shall not commit, suffer or permit to be committed any waste, nuisance, strip or unlawful or improper use of the premises or any part thereof. Lessee shall be responsible for responding to any complaints against the leased premises and for resolving any issues arising from the complaints, including but not limited to, taking action to halt any waste, nuisance, or unlawful use of the premises.

7. Compliance with Laws. The Lessee shall comply with the applicable laws of all governmental authorities having jurisdiction over the Leased Land, construction of the improvements, and use and operation of the premises now in force or which may become effective subsequent to the commencement of this Lease.

8. Inspection of Premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the Lease term, to enter the premises and examine the state of its repair and condition with three (3) business days prior written notice to Lessee.

9. Improvements. Excepting any improvements installed and owned by Hawaiian Electric, the Lessor shall own any improvements until the execution of the condominium lease described in Section 42, at which time the ownership shall, become the property of the Lessee.

10. Repairs to Improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted as to comparable developments in Hawaii, similar in age, desirability of location, level of housing affordability, kind and nature to the improvements. Lessee shall also, at its own expense, make any and all repairs and perform all work required to keep the premises, buildings, and improvements on the premises in compliance with all County, State, and Federal laws and regulations, including but not limited to environmental, Americans with Disabilities Act, and other requirements.

11. Liens. Except for the liens permitted by Section 13, Section 19 and Section 20 of this Lease, the Lessee shall at all times keep the premises free and clear of all mechanics' and materialmen's liens and all other liens and encumbrances. Lessee shall promptly pay all contractors and materialmen in accordance with its contract(s) for construction of any improvements with respect to work performed by or for Lessee or materials purchased by or for Lessee so as to prevent any liens attaching to the premises. Notwithstanding the preceding sentence, Lessee may contest any and all invoices and payment requests from such contractors and materialmen, provided that Lessee, if the amount contested exceeds Twenty-Five Thousand Dollars (\$25,000), shall first post with Lessor a bond (in an amount equal to 100% of the contested invoices) or other security, in form and amount reasonably acceptable to Lessor, to secure the payment of any contested amounts (plus any fees, interests and penalties) and the removal of any liens which may attach as a result of such nonpayment and contest if such lien remains outstanding for a period of more than twenty (20) calendar days. To the extent permitted by law, and as authorized by the Maui County Council Lessee shall defend, indemnify, and hold harmless the Lessor from and against any claims for such liens and encumbrances and all resulting expenses.

12. Character of Use. The Lessee shall use or cause the premises to be used for bus transit hub purposes ("Project"). Lessee shall ensure that the use and occupancy of the premises complies with all applicable County, State, and Federal laws and regulations.

13. Assignments of Lease, etc. Lessee shall not assign this Lease without the written approval or consent of Lessor. A permitted assignee shall have the same rights and obligations hereunder as the original Lessee; provided, however, that no such assignment shall be effective to transfer any interest in this Lease unless Lessor shall have approved or consented to the assignment and shall have received either a true executed copy of such assignment or written notice thereof, the written undertaking of the assignee to perform all obligations of Lessee hereunder, which undertaking may be incorporated in such assignment. No such assignment shall release the Lessee or assignor from further liability hereunder unless Lessor shall consent in writing to such assignment, and Lessor will not require payment of any money except a reasonable service charge for such consent nor withhold such consent unreasonably or because of the assignee's national origin, race, color or creed; provided, however, that any person acquiring the leasehold estate in consideration of the extinguishment of a debt secured by mortgage of this Lease or through foreclosure sale, judicial or otherwise, shall be liable to perform the obligations imposed on Lessee by this Lease only during the period such person has possession of ownership of the leasehold estate.

14. Subletting. Lessee shall not be allowed to sublet the whole or a portion of the premises for any lawful purpose without the prior approval of the lessor.

15. Indemnity. The Lessee shall, to the extent permitted by law, and as authorized by the Maui County Council, indemnify, defend and hold harmless the Lessor, the State of Hawaii, and their officers, employees, directors, agents, representatives, officials, successors and assigns from and against any and all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, relating to, arising out of or resulting from: (a) the acts or omissions of the Lessee or its employees, officers, agents, or subcontractors; (b) this

Lease; (c) the design, construction, repair, renovation, or defects of the Project, premises, or improvements thereon and/or lease, use, occupation or operation of the Project, premises, or improvements thereon; and/or (d) the enforcement of this Lease (whether or not suit is brought therefore). This provision shall survive the expiration or earlier termination of this Lease, notwithstanding any other provision to the contrary.

16. Costs of Litigation. To the extent permitted by law, and as authorized by the Maui County Council, in case the Lessor shall be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, reasonable attorney's fees, and expenses incurred by or imposed on the Lessor.

17. Liability Insurance. Lessee shall maintain insurance acceptable to Lessor in full force and effect throughout the term of this Lease. The policy or policies of insurance maintained by the Lessee shall provide the following minimum policy limits and coverages:

Coverage

Minimum Policy Limits

Commercial General
Liability and Auto-
mobile Insurance

Lessee's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this Lease. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the Lessee does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.

Pollution Liability

Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee all arising out of Lessee's lease and use of the Leased Land. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit

may not be less than \$3,000,000. The policy shall name the State of Hawaii, Department of Land and Natural Resources, the Department of Accounting and General Services, and the Lessor as additional insured parties.

Workers' Compensation

As required by Hawaii laws

Property

Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by Lessee, located on the premises. Lessee shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. State of Hawaii, Department of Land and Natural Resources, Department of Accounting and General Services, and Lessor shall be loss payees under the Property Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.

The Commercial General Liability Insurance and the Automobile Insurance shall contain the following four provisions:

- a. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
- b. The State of Hawaii, Department of Land and Natural Resources, Department of Accounting and General Services, and Lessor are added as additional insured parties for operations performed on the property under this Lease.
- c. (Deleted).
- d. Insurance shall include a cross liability or severability of interest clause.
- e. The Lessee shall immediately provide written notice to the Lessor should any of the insurance policies evidenced on its Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this Lease and on the leased premises, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this Lease

and on the premises, including operations performed outside the work area and all change order work.

Lessee agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the Lessee to enter into a pre-loss agreement to waive subrogation without an endorsement, the Lessee shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the Lessee enter into such an agreement on a pre-loss basis.

Lessee agrees to deposit with Lessor, on or before the Effective Date of this Lease, certificates of insurance necessary to satisfy Lessor that the insurance provisions of this Lease have been complied with. Lessee further agrees to keep such insurance in effect and current certificates of insurance on deposit with Lessor during the entire term of this Lease. The certificates of insurance shall refer to this Lease. At any time required by Lessor, Lessee shall deposit with Lessor copies of insurance policy(s) that are or were in effect during the term of this Lease.

Lessor shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this Lease. If, in the reasonable opinion of Lessor, the insurance provisions in this Lease do not provide adequate protection for Lessor, Lessor may require the Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. Lessor's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

Lessor shall notify the Lessee in writing of any changes in the insurance requirements desired by Lessor. If the Lessee does not deposit copies of insurance policies with Lessor incorporating such changes requested by Lessor within sixty (60) days of receipt of such notice, this Lease shall be in default without further notice to the Lessee and Lessor shall be entitled to all legal remedies, including termination of this Lease, and the Lessee shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, Lessee shall have the right to contest Lessor's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the Lessee's liability under this Lease nor to fulfill the indemnification provisions and requirements of this contract. Notwithstanding the policy or policies of insurance, the Lessee shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this Lease to the extent the Lessee is liable therefor under Sections 11, 15 or 29 of this Lease.

All rights or claims or subrogation against the State of Hawaii and Lessor, their officers, employees, and agents are waived.

Lessee shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this Lease, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.

17A. Contractor's Pollution Liability Insurance. Any general contractor contracted to build a building or undertake substantial rehabilitation of the Project on the premises shall be required to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. Upon completion of construction, tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract shall be required. The policy shall name the State of Hawaii, Department of Land and Natural Resources, Department of Accounting and General Services, and the Lessor as additional insured parties.

18. [Reserved]

19. [Reserved]

20. Mortgage. The Lessee shall not mortgage, hypothecate, or pledge the premises, any portion, or any interest in this Lease without the prior written approval of the Lessor and any mortgage, hypothecation, or pledge without Lessor's approval shall be null and void.

21. Breach. Time is of the essence in this agreement, and if the Lessee shall fail to pay the rent, or any part, at the times and in the manner provided within thirty (30) days after delivery by the Lessor of a written notice of breach or default, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this Lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this Lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default, by personal service, registered mail or certified mail to the Lessee at its last known address and to each mortgagee or holder of record having a security interest in the premises, the Lessor may bring an action for damages against the Lessee.

22. Condemnation. If at any time, during the term of this Lease, any portion of the premises should be condemned, or required for public purposes by any county or city and county, the rent shall be reduced in proportion to the value of the portion of the premises condemned. Subject to written consent of Lessor, the Lessee shall be entitled to receive from the condemning authority (a) the value of growing crops, if any, which Lessee is not permitted to harvest and (b) the proportionate value of the Lessee's permanent improvements so taken in the proportion that it bears to the unexpired term of the Lease; provided, that the Lessee may, in the alternative, remove and relocate its improvements to the remainder of the premises occupied by

the Lessee. The Lessee shall not by reason of the condemnation be entitled to any claim against the Lessor for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the Lessor's interest by reason of the condemnation shall be payable to and be the sole property of the Lessor. The foregoing rights of the Lessee shall not be exclusive of any other to which Lessee may be entitled by law. Where the portion taken renders the remainder unsuitable for the use or uses for which the premises were leased, the Lessee shall have the option to surrender this Lease and be discharged and relieved from any further liability; provided, that Lessee may remove the permanent improvements constructed, erected and placed by it within any reasonable period allowed by the Lessor.

23. Right to Enter. The Lessor and their agents, representatives, successors or assigns shall have the right to enter and cross any portion of the premises for the purpose of performing any public or official duties; provided, however, (i) in the exercise of these rights, the Lessor, State or County shall not interfere unreasonably with Lessee's use and enjoyment of the premises and (ii) Lessor, or its assigns, shall provide at least three (3) business days prior written notice to Lessee.

24. Acceptance of Rent Not a Waiver. The acceptance of rent by the Lessor shall not be deemed a waiver of any breach by the Lessee of any term, covenant, or condition of this Lease, nor of the Lessor's right of re-entry for breach of covenant, nor of the Lessor's right to declare and enforce a forfeiture for any breach, and the failure of the Lessor to insist upon strict performance of any term, covenant, or condition, or to exercise any option conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any term, covenant, condition, or option.

25. Extension of Time. Notwithstanding any provision contained in this Lease, when applicable, the Lessor may for good cause shown, allow additional time beyond the time or times specified in this Lease for the Lessee to comply, observe, and perform any of the Lease terms, conditions, and covenants.

26. Quiet Enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the Lease, without hindrance or interruption by the Lessor or any other person or persons lawfully claiming by, through, or under it.

27. Surrender. The Lessee shall, at the end of the term peaceably deliver unto Lessor possession of the premises, together with all improvements existing or constructed thereon, or Lessee shall remove such improvements, at the option of the Lessor, in either case, at no cost or expense of Lessor. Furthermore, upon the expiration, termination, and/or revocation of this Lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs

and expenses for disposal, removal, or storage of the personal property. This provision shall survive the expiration or earlier termination of this Lease, notwithstanding any other provision to the contrary.

28. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased "AS IS."

29. Hazardous Materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

To the extent permitted by law, and as authorized by the Maui County Council, lessee agrees to defend, indemnify, and hold harmless Lessor from any damages and claims resulting from the release and/or presence of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. This covenant shall survive the expiration or earlier termination of the Lease.

For the purpose of this Lease "hazardous materials" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

If Lessee discovers any hazardous materials on the premises (other than groundwater contamination not directly caused, created or contributed to by Lessee), the presence of which violates any applicable laws, Lessee shall immediately undertake, at Lessee's expense, to remediate the presence of the hazardous materials in compliance with applicable laws to the extent necessary to permit the construction, operation, maintenance and use of the premises.

30. [Reserved]

31. Hawaii Law. This Lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.

32. Exhibits - Incorporation in Lease. All exhibits referred to are attached to this Lease and hereby are deemed incorporated by reference.

33. 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 Lease.

34. Partial invalidity. If any term, provision, covenant, or condition of this Lease should be held to be invalid, void or unenforceable, the remainder of this Lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

35. Time Is of the Essence. Time is of the essence in all provisions of this Lease.

36. Archeological Sites. In the event any sites or remains such as shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings, or walls are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization and/or work and contact the Historic Preservation Office at 587-0047 in compliance with Chapter 6E, Hawaii Revised Statutes ("HRS").

37. Set Aside. This Lease is subject to the terms and conditions contained in the set aside of the premises to Lessor, Governor's Executive Order No. 4590, dated July 29, 2019.

38. Counterparts. This Lease may be executed in counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument.

39. Brokers' Commissions. Each party represents to the other that it is not obligated to any broker, finder or other real estate or financing agent in connection with the subject matter of this Lease or any of the transactions contemplated hereby.

40. Notices. Wherever in this Lease one party to this Lease is required or permitted to give or serve a notice, request or demand to or on the other, such notice, request or demand shall be given or served upon the party to whom it is directed in writing and shall be delivered personally with a delivery receipt, delivered by facsimile or forwarded by registered or certified mail, postage prepaid, return receipt requested or by commercial delivery service with a delivery receipt. All notices delivered by personal delivery, certified mail or commercial delivery service shall be deemed received as of the date shown on the delivery receipt as the date of delivery, the date delivery was refused, or the date the item was returned as undeliverable. Either party may change its address for the purposes of this paragraph by giving prior written notice of the change to the other party in the manner provided in this section.

41. Authority. The parties represent that the undersigned individuals possess the legal authority to enter into this lease and that the signatures shall be sufficient to bind the parties to the terms of this lease. In addition to the signatures below, this lease shall be subject to approval by the Maui County Council.

42. Conversion to Condominium Lease. The parcel of land at 153 West Kaahumanu Avenue, Kahului, Maui, Hawaii, totaling approximately 5.572 acres, Tax Map Key No. (2) 3-7-004: 003, which includes the premises, is planned for development of a mixed-use project

consisting of multi-family affordable rental housing, office space/civic center, parking, a transit bus hub, and other incidental uses, which will include the creation of a condominium property regime to legally separate the mixed-uses ("Kahului Civic Center Mixed-Use Complex"). Lessee hereby agrees to the creation of a condominium property regime of the premises and conversion of this Lease to a condominium lease when the condominium property regime is created for the development of the Kahului Civic Center Mixed-Use Complex. Lessee agrees to execute any and all documents necessary to accomplish the creation of the condominium property regime and/or conversion of this Lease to a condominium lease, provided that the terms of said condominium lease are substantially consistent with this Lease and acceptable to Lessor.

43. Lessor's Reservation to Make Modifications. Lessor reserves the right to make minor adjustments or modifications to the premises and improvements at its expense to conform the premises and improvements to the master plan for the Kahului Civic Center Mixed-Use Complex, including but not limited to modifications to the boundary of the premises, modifications to the permanent perimeter fence or barrier of the premises, or modifications to the Vevau Street driveway access to the property at 153 West Kaahumanu Avenue.

44. Lessor's Reservation to Subdivide the Premises. Lessor reserves the right to subdivide or to require a subdivision of the premises from the balance of the property.

45. Attorneys' Fees and Costs. Should any litigation be commenced between the parties hereto concerning this Lease, the subject matter of this transaction, or the rights and duties of either in relation thereto, each party shall pay their own attorneys' fees and costs of litigation.

--The remainder of this page is intentionally left blank; the signature page follows--

Ground Lease

Lessor: Hawaii Housing Finance and Development Corporation

Lessee: County of Maui

TMK: (2) 3-7-004: 003 (portion of)

IN WITNESS WHEREOF, the parties have executed this Lease on the date and year first above written.

Approved by the Board of Directors
of Hawaii Housing Finance and
Development Corporation at its
meeting held on:

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

June 14, 2018

By _____

Delmond J.H. Won
Executive Assistant

"Lessor"

APPROVED AS TO FORM:

Deputy Attorney General

Ground Lease
Lessor: Hawaii Housing Finance and Development Corporation
Lessee: County of Maui
TMK: (2) 3-7-004: 003 (portion of)

APPROVAL RECOMMENDED:

COUNTY OF MAUI
a political subdivision of the State of Hawaii

Scott Teruya, Director
Department of Finance

By _____
Richard T. Bissen, Jr.
Its Mayor

APPROVED AS TO FORM AND LEGALITY:

“Lessee”

Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
)
) SS
CITY AND COUNTY OF HONOLULU)

On this _____ day of _____, 20____, before me appeared DELMOND J.H. WON, personally known to me, who, being by me duly sworn, did say that (s)he is the Executive Assistant of the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION, a public body and a body corporate and politic of the State of Hawaii, that the seal affixed to the foregoing instrument is the corporate seal of the corporation, and that the instrument was signed and sealed on behalf of the corporation by authority of its Board of Directors, and the said officer acknowledged the instrument to be the free act and deed of the corporation.

Doc. Date _____

of Pages _____

Doc. Description: Ground Lease, Maui Bus Hub, Kahului Civic Center Mixed-Use Complex

Name:
Notary Public, State of Hawaii
First Judicial Circuit

My commission expires: _____

EXHIBIT "A"

Transit Hub Area

Affecting a portion of the Kahului Mixed Use Project Site, C.S.F. 25,731, as described in Executive Order No. 4590 dated August 9, 2019, the same being portions of Block E, Block L, and Third Street of Kahului Townsite, File Plan 21, being also a portion of Grant 3343 to Claus Spreckels, situated at Kahului, district of Wailuku, Island and County of Maui, State of Hawaii.

Beginning at the Southeasterly corner of the Kahului Mixed Use Project Site along the Northerly side of the intersection of Vevau (Fourth) Street and School Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being:

2,868.42 feet North

8,648.11 feet East

and running by azimuths measured clockwise from True South:

- | | | | |
|----|------------|--------|---|
| 1. | 70° 21' | 269.25 | feet along the Northwesterly side of Vevau (Fourth) Street; |
| 2. | 160° 21' | 118.25 | feet along the remainder of Kahului Mixed Use Project Site, C.S.F. 25,731, being also the remainder of Grant 3343 to Claus Spreckels; |
| 3. | 250° 21' | 269.25 | feet along same; |
| 4. | 340° 21' | 118.25 | feet along Lot 2 of School Street Subdivision (Subdivision File Number 3.1380), being also the remainder of Grant 3343 to Claus Spreckels to the point of beginning and containing an area of 31,839 Square Feet. |

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in the following:

INSTRUMENT : GOVERNOR'S EXECUTIVE ORDER NO. 4590.

DATED : July 29, 2019

The foregoing includes, but is not limited to, matters relating to the public land described therein is set aside for the development of a mixed-use project consisting of multi-family affordable rental housing, office space/civic center, parking, new Maui bus hub and other incidental uses purposes, to be under the control and management of the Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic, and restoration condition upon cancellation of this Executive Order.

3. Restriction of rights of vehicle access into and from Main Street (now Kaahumanu Avenue) and Kane Street over and across Courses 1 to 5, inclusive, of PARCEL 30 described therein, pursuant to the rights (of access) acquired by the STATE OF HAWAII, by QUITCLAIM DEED dated April 5, 1963, recorded in Liber 4543 at Page 140.

End of Exhibit "A"

MEMORANDUM OF UNDERSTANDING
BUS HUB AND COUNTY WAILUKU PARCEL
KAHULUI CIVIC CENTER MIXED-USE PROJECT

THIS MEMORANDUM OF UNDERSTANDING ("MOU"), dated as of 12-24-18 ("Effective Date"), made by and between the HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HHFDC"), a public body and a body corporate and politic of the State of Hawaii, doing business at 677 Queen Street, Suite 300, Honolulu, Hawaii, 96813, the DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES ("DAGS"), doing business at the Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii, 96813, and the COUNTY OF MAUI ("County"), a political subdivision of the State of Hawaii, doing business at 200 South High Street, Wailuku, Hawaii, 96793.

WITNESSETH:

WHEREAS, the State of Hawaii owns the fee simple title to the parcel of land at 153 West Kaahumanu Avenue, Kahului, Maui, Hawaii, totaling approximately 5.572 acres, Tax Map Key No. (2) 3-7-004: 003 ("Property"), as shown on Exhibit A attached hereto and hereby incorporated by reference;

WHEREAS, the Property was set aside to DAGS by Executive Order No. 3586 dated May 20, 1993 for Kahului Civic Center purposes;

WHEREAS, the Property is NOT ceded lands;

WHEREAS, the Property is currently being utilized for Department of Education's Adult Education and Lawnmower Operations;

WHEREAS, the County is required to vacate the Maui Bus transit hub at Queen Kaahumanu Center by January 31, 2020 and would like to relocate the transit hub to a new location on approximately 0.5 acre at the Property along Vevau Street, on the east side of the Property driveway, for six buses and a proposed 150 feet by 30 feet concrete pad for a proposed canopy with restroom facilities ("New Maui Bus Hub");

WHEREAS, the Kahului Lani Affordable Senior Housing Project ("Kahului Lani") across Vevau Street from the Property is required to improve Vevau Street between Kahului Lani and the Property and has received its financing for Phase I and is scheduled to start construction in 2018;

WHEREAS, the County owns a parcel of land at 70 South High Street, Wailuku, Maui, Hawaii, 96793, adjacent to DAGS' Wailuku Civic Center, also known as the State Office Building ("SOB"), totaling approximately 18,502 square feet, 0.425 acre, Tax Map

Key No. (2) 3-4-013: 014, as shown on Exhibit B attached hereto and hereby incorporated by reference ("County Wailuku Parcel"), which the County has indicated may be available for long-term lease to DAGS at \$1/year for 65 years for a complimentary use with the SOB, in exchange for a long-term lease for the portion of the Property for the New Maui Bus Hub, subject to County Council approval;

WHEREAS, by Senate Concurrent Resolution No. 145, S.D. 1, the Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017, has requested that HHFDC, DAGS and the County work together to:

- (1) Explore the feasibility of transferring the Property to HHFDC for the purpose of developing a mixed-use rental housing project that includes consideration of DAGS' civic center needs in Kahului and Wailuku, Hawaii; and
- (2) Enter into a memorandum of understanding, if appropriate, to execute the transfer;

WHEREAS, on February 1, 2018, HHFDC and DAGS entered into a Memorandum of Understanding ("HHFDC-DAGS MOU") to optimize development of the Property with a mixed-use project consisting of multi-family affordable rental housing, office space/civic center, parking, the New Maui Bus Hub, and other incidental uses ("Project"), which may include the County Wailuku Parcel as part of the office space/civic center portion of the Project;

WHEREAS, H.B. No. 1900, H.D. 1, S.D. 2, C.D. 1¹ of the 2018 State of Hawaii Legislature appropriated \$2.5 million of Capital Improvement Program ("CIP") funds to HHFDC for the Project, including the New Maui Bus Hub, as follows:

Plans	\$ 1,000
Land	1,000
Design	497,000
Construction	2,000,000
Equipment	1,000
Total	<u>\$2,500,000</u>

WHEREAS, HHFDC proposes to earmark, subject to HHFDC Board of Directors approval, up to \$1.5 million from the Dwelling Unit Revolving Fund ("DURF") appropriated by the 2018 Legislature² for the Project, subject to program requirements and approvals by HHFDC Board of Directors and Governor;

WHEREAS, HHFDC, DAGS and the County wish to enter into this MOU to define their respective roles and responsibilities in the administration and use of the CIP funds for the New Maui Bus Hub;

¹ Item No. 27.01, at page 95, now Act 53 Session Laws of Hawaii 2018.

² \$10 million appropriated to DURF funds, H.B. No. 2748, H.D. 2, S.D. 2, C.D. 1, Twenty-Ninth Legislature, 2018, now Act 39 Session Laws of Hawaii 2018.

NOW, THEREFORE, the parties hereby agree as follows:

- I. HHFDC Obligations. HHFDC agrees to the following:**
- A. Subject to approval by the Legislature and release of funds by the Governor, HHFDC agrees to receive and administer the disbursement of CIP funds for use by the County for the New Maui Bus Hub in accordance with this MOU;**
 - B. The CIP funds may be used for any Project related expense, as approved by HHFDC;**
 - C. Any amendment to the CIP budget shall be subject to HHFDC approval and approval of re-allocation of CIP budget categories by the State of Hawaii Department of Budget and Finance;**
 - D. Request for periodic payments from the CIP funds shall be made by the County by submittal of a written request to HHFDC (no more than once a month), accompanied by the worksheets, invoices and information supporting the withdrawal, in forms attached hereto as Exhibit C, and hereby incorporated by reference, or as otherwise approved by HHFDC; supporting information shall include the CIP funds budget, amount of the CIP funds budget paid to date, amount of the payment requested, and amount of the CIP funds budget remaining for payment;**
 - E. Payments from the CIP funds shall be made payable to the County, for payment to its vendor;**
 - F. HHFDC reserves the right to also withdraw from the CIP funds for Project related expenses;**
 - G. Payment and performance bonds shall be required for construction contracts exceeding the limits of Section 103D-305, HRS;**
 - H. All contracts shall name the State of Hawaii, Department of Land and Natural Resources ("DLNR"), DAGS and HHFDC as additional indemnitees and additional insured parties;**
 - I. Seek approval from the HHFDC Board of Directors and the Governor for the use of up to \$1.5 million in DURF funds appropriated by the 2018 Legislature for planning for the Project;**
 - J. Seek approval from the HHFDC Board of Directors to request for a set aside of the Property to HHFDC for the Project, subject to approval by the Board of Land and Natural Resources ("BLNR") of the cancellation of the existing Executive Order No. 3586;**

- K. Subject to BLNR approval of the cancellation of Executive Order No. 3586, issuance of an Executive Order of the Property to HHFDC, and completion of construction of the New Maui Bus Hub, issue a ground lease to the County without subdivision approval³ for 65 years at \$1/year for the portion of the Property for the New Maui Bus Hub within the boundary proposed by the County and approved by HHFDC and DAGS ("Bus Hub Ground Lease");
- L. Procure a consultant(s) for the hazardous waste assessment, master plan and land use approvals for the Project;
- M. Request appropriate CIP funds from the Hawaii State Legislature for development and construction of the multi-use office space/civic center and parking;
- N. Procure a developer under a request for proposals process for development of the Project in accordance with the HHFDC-DAGS MOU.

II. DAGS Obligations. DAGS agrees to the following:

- A. Request BLNR approval of a cancellation of Executive Order No. 3586 and issuance of a new Executive Order to HHFDC for the Project, upon terms and conditions acceptable to DAGS and HHFDC;
- B. Until cancellation of Executive Order No. 3586 and subject to DLNR approval of rights-of-entry longer than 14 days per entry, issue rights-of-entry less than 14 days per entry to the County for the planning, design, construction and/or operation of the New Maui Bus Hub;
- C. Accept a 65-year, \$1/year ground lease of the County Wailuku Parcel from the County in a form acceptable to DAGS and the County, for the development and operation of an office building with ancillary parking;
- D. Provide the program requirements for the office space/civic center uses and parking for the Project;
- E. Assist in coordinating the relocation of the DOE lawnmower operations from the Property;
- F. Provide any documented historical data on the Property, such as hazardous materials assessments, to the HHFDC consultant for the master planning of the Project;

³ The County believes that subdivision approval is not required for the Bus Hub Ground Lease.

III. County Obligations. The County shall be responsible for the following:

- A. Provide and authorize the use of any studies and reports relating to the County Wailuku Parcel, such as hazardous materials assessments, topographic surveys, geotechnical surveys, and technical studies previously done by the County for an Environmental Assessment for an office building project at the County Wailuku Parcel;**
- B. Approve a right-of-entry over the County Wailuku Parcel for planning and design of the Project;**
- C. Issue a 65-year ground lease of the County Wailuku Parcel at \$1/year to DAGS for development and operation of an office building with ancillary parking. Subject to reasonable access by DAGS for planning and engineering purposes, County to maintain and utilize this parcel under a sublease from DAGS until start of construction by DAGS;**
- D. Approve the Project as a mixed-use project as required by Act 131 Session Laws of Hawaii 2016;**
- E. Until Executive Order No. 3586 is cancelled, obtain rights-of-entry to the Property less than 14 days per entry from DAGS⁴; after a new Executive Order is issued to HHFDC, obtain any rights-of-entry to the Property from HHFDC;**
- F. Complete an Environmental Assessment ("EA") for the New Maui Bus Hub pursuant to Chapter 343, Hawaii Revised Statutes ("HRS") in accordance with a plan approved by DAGS and HHFDC, which shall be subject to the following:**
 - 1. The property boundary for the New Maui Bus Hub shall be subject to the approval by DAGS and HHFDC;**
 - 2. Design and construction of the New Maui Bus Hub shall include a permanent fence or barrier at the proposed boundary between the New Maui Bus Hub and the balance of the Property;**
 - 3. The Vevau Street access to the Property shall not be located farther east on Vevau Street than the driveway to the proposed Kahului Lani project across Vevau Street from the Property;**
 - 4. After completion of construction of the New Maui Bus Hub, HHFDC reserves the right to make minor adjustments or modifications to the New Maui Bus Hub consistent with the master plan for the Project, including modifications to the property boundary, modifications to the permanent perimeter fence or barrier, or modifications to the Vevau Street driveway access to the Property;**

⁴ Rights-of-entry longer than 14 days shall require BLNR approval.

- G. Be the proposing and accepting agency for the EA for the New Maui Bus Hub;**
- H. Compliance with Chapter 343, HRS, for the use of the CIP funds and the Property;**
- I. Compliance with Chapter 6E, HRS and Federal Section 106 processes, as applicable, for preserving, restoring, and maintaining historic and cultural properties;**
- J. Procure all consultants and contractors for the planning, design and construction of the New Maui Bus Hub in compliance with Chapter 103D, HRS, for the procurement of goods and services;**
- K. The County shall not commence construction of the New Maui Bus Hub at the Property until a Notice to Proceed date has been issued by HHFDC. The Notice to Proceed shall not be issued prior to the fulfillment to HHFDC's satisfaction of all of the following conditions precedent:**
 - 1. The County has obtained a right-of-entry to the applicable portion of the Property, from DAGS or HHFDC, as applicable, and for work off the Property, the County shall furnish to HHFDC evidence that the County has obtained a right-of-entry from the respective landowner.**
 - 2. The EA for the proposed construction has been completed.**
 - 3. The County shall furnish to each of HHFDC and DAGS two (2) half-sized set of plans and a "pdf" electronic file on CD of the set of plans and specifications for the proposed construction approved by DAGS, HHFDC and the Disability and Communication Access Board.**
 - 4. The County shall furnish to HHFDC evidence satisfactory to HHFDC that the proposed construction is in compliance with the requirements of Section 103-50, HRS, and the Disability and Communication Access Board, or that Section 103-50, HRS is not applicable to the project.**
 - 5. The County shall furnish to HHFDC evidence satisfactory to HHFDC that the County has obtained a foundation or building permit for the proposed construction.**
 - 6. If applicable, the County shall furnish to HHFDC evidence of Notice of General Permit Coverage approved by the Department of Health for the type of discharge(s) from the project authorized by an NPDES General Permit.**
 - 7. The County shall furnish to HHFDC a copy of the construction contract for the proposed work to be commenced ("Construction Contract").**
 - 8. The County shall furnish to HHFDC a copy of a performance and payment bond equal to 100% of the Construction Contract for the work to be commenced. The contractor shall be the principal, and the surety shall be a corporate surety satisfactory to HHFDC. The bond shall be conditioned upon the full and proper performance of the work in accordance with the plans and specifications approved by HHFDC**

and DAGS and upon the payment of all materials and labor in connection with the development and construction of the project. The State of Hawaii and DAGS, DLNR and HHFDC shall be additional obligees on the bonds.

9. The County shall provide evidence to HHFDC that the County has sufficient funds secured and available to pay for the proposed construction.
- L. If required, obtain subdivision approval for the Bus Hub Ground Lease.
- M. Accept the Bus Hub Ground Lease when offered by HHFDC.
- N. Agree to a conversion of the Bus Hub Ground Lease to a condominium conveyance document when a condominium property regime is created for the Project.
- O. Maintain insurance acceptable to HHFDC in full force and effect throughout the term of this MOU as set forth in Exhibit D, which is attached and incorporated by reference.
- P. Require any general contractor contracted for the construction or substantial rehabilitation of the New Maui Bus Hub on the Property to obtain and maintain Pollution Liability Insurance covering its liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs arising out of or caused by the operations and construction activities of said general contractor. Combined single limit per occurrence shall not be less than \$3,000,000 and aggregate limit of not less than \$5,000,000. The policy shall have tail coverage extending 5 years beyond the completion of the work contemplated by the applicable construction contract. The policy shall name the State of Hawaii, DLNR, DAGS and HHFDC as additional insured parties.
- Q. Observe and comply with all applicable laws, ordinances, rules and regulations of the federal, state or county governments affecting the Property and the CIP and DURF funds.
- R. Assume sole and complete liability for and shall indemnify, defend and hold the State of Hawaii, DLNR, DAGS and HHFDC harmless from and against any loss, liability, claim or demand for property damage, personal injury, and death arising out of any act or omission of the County and the County's contractors under this MOU to the extent permitted by law and subject to approval by the Maui County Council. This provision shall survive the expiration or earlier termination of this MOU, notwithstanding any other provision to the contrary.

IV. Other Constraints.

- A. Pursuant to Act 131 Session Laws of Hawaii 2016 for mixed-use development, the Project shall be approved by the county in which the Project is located and shall be subject to Chapter 104, HRS, title 40 United States Code sections 3141, 3142, 3143, 3144, 3146, and 3147, or a project labor agreement by law or contract in the construction of the Project.**
- B. Pursuant to Section 15-307-27, Hawaii Administrative Rules, the Project shall be primarily designed for affordable housing.**
- C. The parties acknowledge that the CIP funds shall lapse if not encumbered by June 30, 2020. This MOU is contemplated to encumber the CIP funds. If this MOU encumbers the CIP funds, termination of this MOU with no replacement encumbrance before the encumbrance deadline shall lapse any unexpended funds.**
- D. The parties acknowledge that since completion of construction of the Maui Bus Hub is likely to precede the completion of the master plan for the Project, after completion of the master plan for the Project, the New Maui Bus Hub shall be subject to minor adjustments to the boundary or improvements (to be done by the County at HHFDC's discretion with funds provided under this MOU or by HHFDC's developer of the Project) to conform the New Maui Bus Hub with the master plan of the Project.**
- E. If there are any inconsistencies between the requirements of this MOU and other applicable requirements, the more restrictive requirement shall control.**

V. Term. This MOU shall be effective as of the date listed above and shall continue until the earliest to occur of the following:

- A. Any party may terminate this MOU with sixty (60) days' prior written notice to the other parties; or**
- B. Fulfillment of the objectives of this MOU.**

Upon termination of this MOU, HHFDC, DAGS and the County shall be released from any further obligations hereunder.

VI. Amendments, Waiver. This MOU can only be changed by an instrument in writing signed by HHFDC, DAGS and the County. The terms of this MOU may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by HHFDC, DAGS and the

County. Any waiver in whole or in part to any of the terms and conditions hereunder, shall be specific and not general. Each waiver shall only apply to specific conditions and circumstances.

- VII. **Binding Effect of Agreement.** This MOU shall be binding upon and inure to the benefit of HHFDC, DAGS and the County, and their respective successors and assigns.
- VIII. **Gender and Number.** The use of any pronoun in reference to HHFDC, DAGS and the County shall be construed to mean the singular or plural, the masculine, feminine or neuter, as the instrument and context may require.
- IX. **No Party Deemed Drafter.** The parties agree that neither HHFDC, DAGS nor the County shall be deemed to be the drafter of this MOU and in the event this MOU is ever construed by a court of law, such court shall not construe this MOU or any provision hereof against any party as the drafter of this MOU.
- X. **Counterparts.** This MOU may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument but all such counterparts together shall constitute but one MOU.
- XI. **Invalidity of Provision.** If any provision of this MOU as applied to any party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect any other provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this MOU as a whole.
- XII. **Applicable Law.** This MOU shall be interpreted in accordance with the laws of the State of Hawaii as such laws are construed and amended from time to time.
- XIII. **Notices.** Any written notice required to be given by any party to this MOU shall be (a) 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:

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

Notice to DAGS shall be addressed to:

**Comptroller
Department of Accounting and General Services
P.O. Box 119
Honolulu, Hawaii 96810**

Notice to the County shall be addressed to:

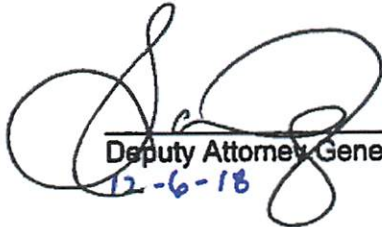
**Director
Department of Transportation
County of Maui
2145 Kaohu Street, Suite #102
Wailuku, Hawaii 96793**

- XIV. Approvals Required. Notwithstanding anything to the contrary contained herein, this MOU shall not be binding upon the parties unless and until this MOU has been approved by the County Council and the HHFDC Board of Directors no later than one hundred twenty (120) days after the last execution of this MOU, unless extended at the sole discretion of HHFDC, the notification of such approval shall be provided to the other parties in a timely manner.**

[The remainder of this page is blank. The next page is a signature page.]

IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first written above.

Approved as to Form:


Deputy Attorney General
12-6-18

Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawaii

By 
Craig K. Hirai
Executive Director

"HHFDC"

APPROVED AS TO FORM:


Deputy Attorney General

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, State of Hawaii

By 
Roderick Becker
Comptroller

"DAGS"

Approval Recommended:


Mark R. Walker, Director
Department of Finance

COUNTY OF MAUI

By 
Alan M. Arakawa
Mayor

"County"

Approved as to Form and Legality:


Deputy Corporation Counsel
County of Maui (LF 2018-0791)

x:\c:\ksh civ ctr\mou county-dags bus hub.hhfdc.dags.ag.COM.rev.9-18-18clean

IN WITNESS WHEREOF, the undersigned have executed these presents as of the day and year first written above.

Approved as to Form:

Hawaii Housing Finance and Development Corporation, a public body and a body corporate and politic of the State of Hawaii

Deputy Attorney General

By _____
Craig K. Hirai
Executive Director

"HHFDC"

APPROVED AS TO FORM:

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES, State of Hawaii

Deputy Attorney General

By _____
Roderick Becker
Comptroller

"DAGS"

Approval Recommended:

COUNTY OF MAUI




Mark R. Walker, Director
Department of Finance

By 

Alan M. Arakawa
Mayor

"County"

Approved as to Form and Legality:



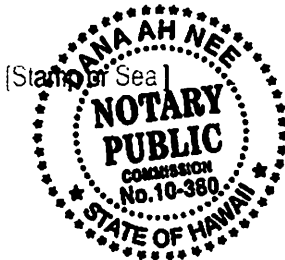
for *Jeric Sheppard*
Deputy Corporation Counsel
County of Maui (LF 2018-0791)

x:\c:\kah civ ctr\mou county-dags bus hub hhfdc dags ag COM.rev 9-18-18clean

STATE OF HAWAII _____)
COUNTY OF MAUI _____) SS. _____)

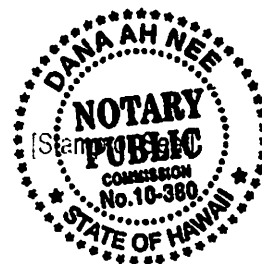
On this 21st day of December, 2018, before me personally appeared Craig Kazuo Hirai, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Dana Ah Nee
Notary Public, State of Hawaii
Print Name: DANA AH NEE
My commission expires: NOV 14 2022

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>Undated</u>	# Pages:	<u>33</u>
Notary Name:	<u>DANA AH NEE</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Memorandum of Understanding</u> <u>Bus Hub and County Wailuku Parcel</u> <u>Kahului Civic Center Mixed-Use Project</u>		
Notary Signature:	<u>Dana Ah Nee</u>		
Date:	<u>DEC 21 2018</u>		



STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) ss.
COUNTY OF MAUI)

On this the 21st day of December, 2018, before me personally appeared Roderick Becken ☒ personally known to me -OR- ☐ proved to me on the basis of satisfactory evidence 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(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).

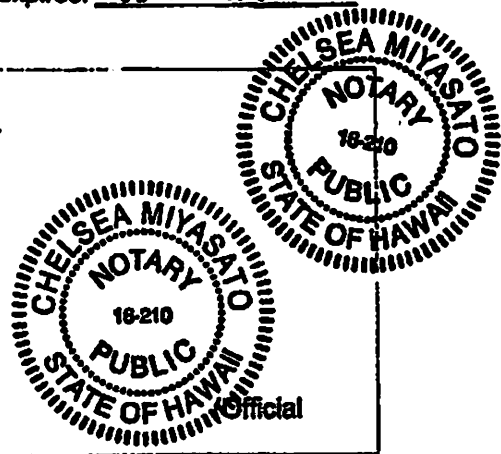
Chelsea Miyasato
Printed Name: Chelsea Miyasato
Notary Public, State of Hawaii
My commission expires: 06-12-2020

(Official Stamp or Seal)

NOTARY CERTIFICATION (at time of notarization)

Doc. Date: undated # Pages: 24
Notary Name: Chelsea Miyasato First Circuit
Doc. Description: MEMORANDUM OF UNDERSTANDING, BUS HUB AND COUNTY WAILUKU PARCEL, KAHULUI CIVIC CENTER MIXED-USE PROJECT

Chelsea Miyasato 12/20/18
Notary Signature Date
Stamp or Seal)



STATE OF HAWAII

COUNTY OF MAUI

)
) SS
)

On this 24th day of December, 20 18, before me personally 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 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA acknowledged that said instrument to be the free act and deed of said County of Maui.



Keli P. Nahookaika

Name: KELI P. NAHOOIKAIKA
Notary Public, State of Hawaii
Second Judicial Circuit

My commission expires: 4.30.2022

Doc. Date: 12-24-18 # Pages: 32
Keli P. Nahookaika Second Circuit
Doc. Description: Memorandum of
understanding, bus hub - county
mailing parcel Kahului Civic Center
mixed-use project
Keli P. Nahookaika 12-24-18
Notary Signature Date

NOTARY CERTIFICATION



EXHIBIT A

(Location Map – Kahului Property)

EXHIBIT B

(Location Map – County Wailuku Property)

EXHIBIT C

(Draw Request Forms and Worksheets)

EXHIBIT D

(Insurance requirements)

5/12/2018

153 W Keshumanu Ave - Google Maps

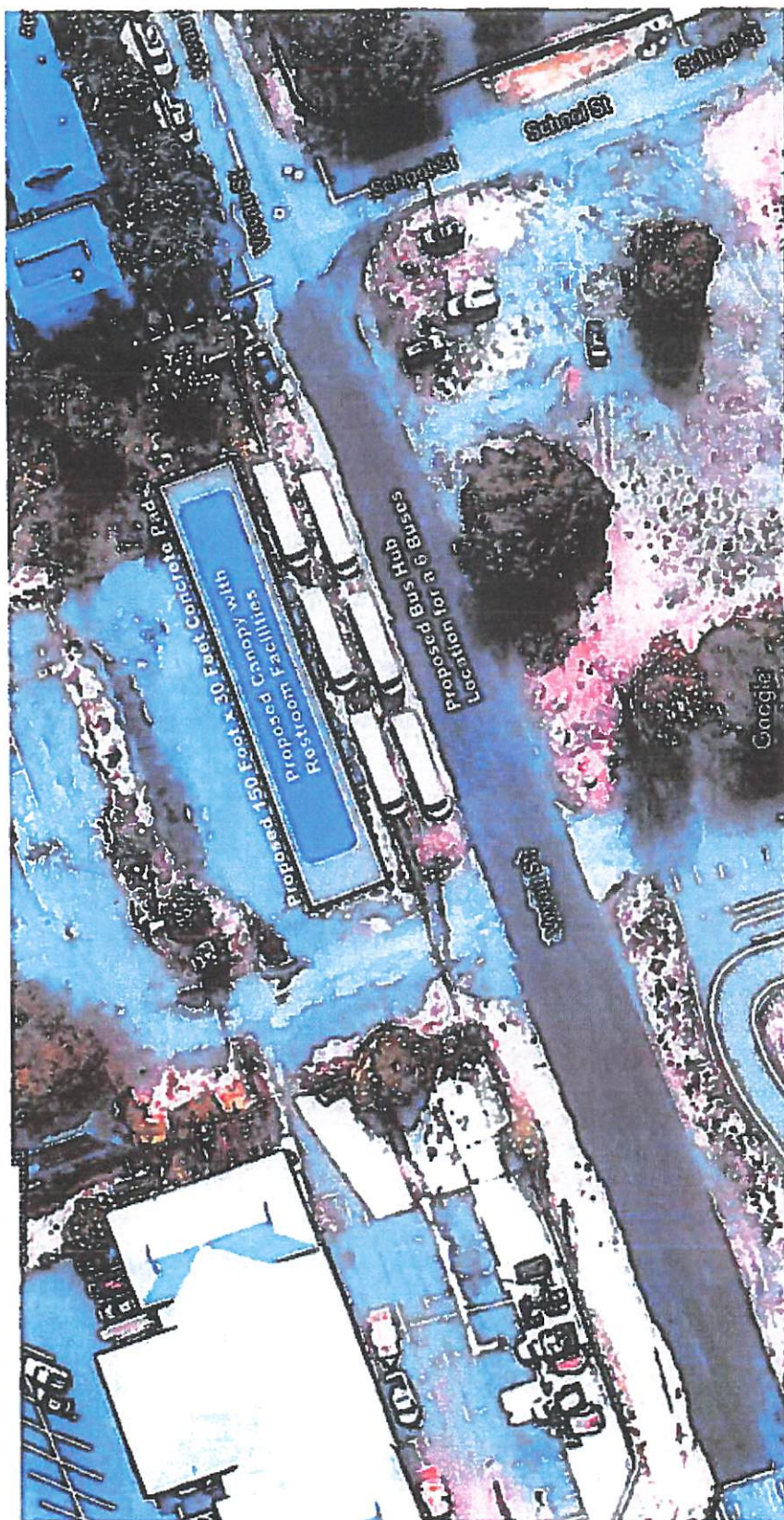


<https://www.google.com/maps/place/153+W+Keshumanu+Ave,+Kahului,+HI+96732/@20.8310836,-156.3921928,66351m/data=!3m1!1e3!4m5!3m4!1s0x7854d2dce200e941:0xb0e897e39dbb75a2?m2!3d20.8895595>

EXHIBIT A

5 W/ery
Bow

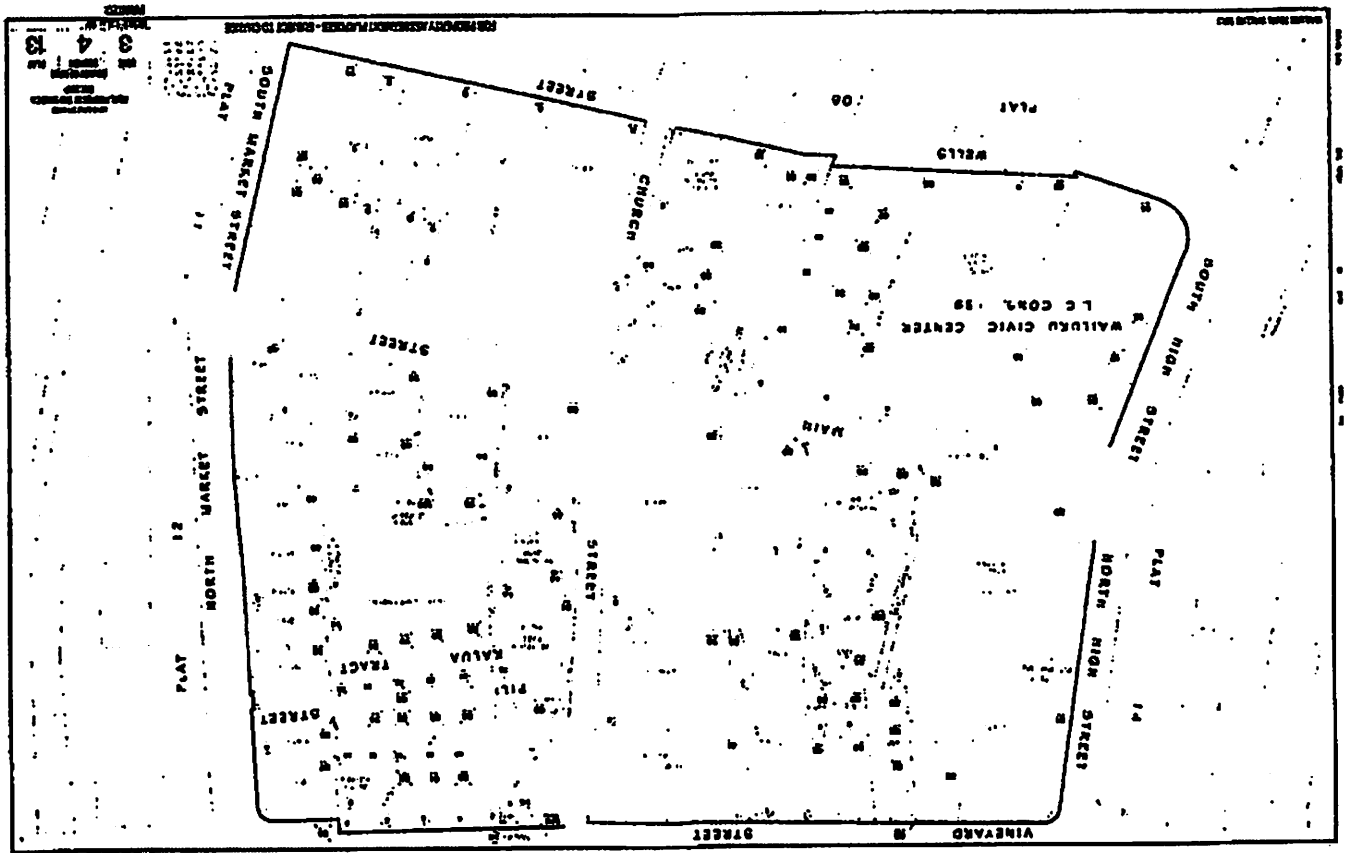




70 S High St - Google Maps



EXHIBIT " B "



DRAFT 3/29/18

DEPARTMENT OF TRANSPORTATION
COUNTY OF MAUI
2145 Keolu Street, Suite #102
Waikuku, Hawaii 96793

Date: _____

DRAW REQUEST AND CERTIFICATION

Hawaii Housing Finance and Development Corporation
877 Queen Street, Suite 300
Honolulu, Hawaii 96813
ATTN: Stan S. Fujimoto, Project Manager

Subject: Draw Request No. _____
CIP Funds
New Maui Bus Hub
Vevau Street
Kahului Civic Center Mixed-Use Project
Kahului, Maui, Hawaii

We request payment for the attached invoices in the following total amount for the above subject
New Maui Bus Hub Project on Vevau Street at the Kahului Civic Center Mixed-Use Project in
Kahului, Maui, Hawaii, TMK No. (2) 3-7-004: 003:

\$ _____ From CIP Funds

We hereby certify that all of the requested items have been paid or are due and payable in
connection with the project pursuant to the project documents including the following:

- Act ____ Session Laws of Hawaii 2018
- Governor's approval of release of CIP Funds for the project dated _____;
and
- MOU between the County and HHFDC for the CIP Funds for the project dated
_____;

After disbursement of the amount requested, the total amount disbursed, and the balance of
proceeds remaining after this disbursement will be as stated in the attached worksheets for the
CIP Funds for the project.

Sincerely,

DEPARTMENT OF TRANSPORTATION
COUNTY OF MAUI

By _____
Name:
Title:

EXHIBIT' C.

**COUNTY MOU - CIP FUNDS FOR NEW MAUI BUS HUB
SUMMARY OF INVOICES
DRAW REQUEST NO. _____**

Budget Item	Vendor	Invoice Date	CIP Funds	Other Funds	Total Draw
Total:			0.00	0.00	0.00

EXHIBIT C-2

c:\ksh\city\csh\csh c-2 - summary of invoices form.xls

**NEW MAIN BUS HUB
TOTAL BUDGET
Payment Request**

7/12/2018
2:47 PM

CBP Funds	INITIAL APPROVED BUDGET	CURRENT APPROVED BUDGET	% COMP	COST TO DATE PREVIOUS	COST TO DATE NEW	BALANCE	THIS DRAW REQUIRE
SCOPE OF WORK							
LAND							
Land	\$1,000.00	\$1,000.00		\$0.00	\$0.00	1,000.00	0.00
FOR SITE WORK							
Stewart Costs	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
NEW CONSTRUCTION							
Construction	\$2,000,000.00	\$2,000,000.00		\$0.00	\$0.00	2,000,000.00	0.00
Equipment	\$1,000.00	\$1,000.00		\$0.00	\$0.00	1,000.00	0.00
CONTINGENCY							
Construction Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Soft Cost Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
ARCHITECTURAL & ENGINEERING FEES							
Fees	\$581,000.00	\$581,000.00		\$0.00	\$0.00	581,000.00	0.00
Design	\$581,000.00	\$581,000.00		\$0.00	\$0.00	581,000.00	0.00
Environmental Assessment (EA)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Engineering Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Landscape Architect	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
LEED Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Permitting	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
INTERIM COSTS							
Construction Insurance	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Construction Interest	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Construction Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Construction Credit Enhancement	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Permanent Performance Bond	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Real Property Tax & Other Taxes	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
PERMITS AND FEES							
Building Permit	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
BWS Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
DOE Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Special Inspections	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
SOFT COSTS							
Planning	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Property Appraisal	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Market Study	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Environmental Report	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
KHFGC LHTC Food/Bio Park District	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Advertising/Marketing	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Permitting	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Survey	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Accounting/Cost Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Working Capital	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
SYNDICATION COSTS							
Organizational (Partnership)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
FINANCING FEES & EXPENSES							
Permanent Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Title and Recording	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
County's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Lender's Counsel	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Lender's Out of Pocket	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
DEVELOPER'S FEES							
Developer's Overhead	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Developer's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
TOTAL COST BEFORE RESERVE	\$3,180,000.00	\$3,180,000.00		\$0.00	\$0.00	\$3,180,000.00	\$0.00
PROJECT RESERVES							
Operating Reserves	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
Errors	\$0.00	\$0.00		\$0.00	\$0.00	0.00	0.00
TOTAL PROJECT COST	\$3,180,000.00	\$3,180,000.00		\$0.00	\$0.00	\$3,180,000.00	\$0.00

**NEW MAUI BUS HUB
CIP FUNDS
Payment Request**

7/12/2018
2:47 PM

SCOPE OF WORK	INITIAL APPROVED BUDGET	CURRENT APPROVED BUDGET	% COMP	COST TO DATE PREVIOUS	COST TO DATE NEW	BALANCE	YTD REQUEST
							\$
LAND							
Land	\$1,000.00	\$1,000.00		\$0.00	\$0.00	1,000.00	\$0.00
FOR SITE WORK							
Signpost Costs	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
NEW CONSTRUCTION							
Construction	\$2,000,000.00	\$2,000,000.00		\$0.00	\$0.00	2,000,000.00	\$0.00
Equipment	\$1,000.00	\$1,000.00		\$0.00	\$0.00	1,000.00	\$0.00
CONTINGENCY							
Construction Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Soft Cost Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
ARCHITECTURAL & ENGINEERING FEES							
Plans	\$1,000.00	\$1,000.00		\$0.00	\$0.00	1,000.00	\$0.00
Design	\$497,000.00	\$497,000.00		\$0.00	\$0.00	497,000.00	\$0.00
Environmental Assessment (EA)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Engineering Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Landscape Architect	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
LEED Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Reimbursement	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
INTERIM COSTS							
Construction Insurance	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Interest	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Credit Enhancement	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Payment and Performance Bond	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Real Property Tax & Other Taxes	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
PERMITS AND FEES							
Building Permits	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
RWS Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
DCR Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Special Inspections	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
SOFT COSTS							
Planning	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Property Agreement	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Market Study	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Environmental Report	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
HHSDC LHTC Fund (Good Faith Deposit)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Advertising/Marketing	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Furniture	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Survey	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Accounting/Cost Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Working Capital	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
SYNDICATION COSTS							
Operational (Partnership)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
FINANCING FEES & EXPENSES							
Permanent Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Title and Recording	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
County's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Lender's Counsel	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Lender's Out of Pocket	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
DEVELOPER'S FEES							
Developer's Overhead	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Developer's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
TOTAL COST BEFORE RESERVE	\$2,600,000.00	\$2,600,000.00		\$0.00	\$0.00	\$2,600,000.00	\$0.00
PROJECT RESERVE							
Operating Reserve	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Reserve	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
TOTAL PROJECT COST	\$2,600,000.00	\$2,600,000.00		\$0.00	\$0.00	\$2,600,000.00	\$0.00

**NEW MAUI BUS HUB
COUNTY FUNDS
Payment Request**

7/12/2018
2:47 PM

SCOPE OF WORK	INITIAL APPROVED BUDGET	PROPOSED BUDGET	% COMP.	COST TO DATE PREVIOUS	COST TO DATE NEW	BALANCE	THE REQUEST
							\$
LAND							
Land	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
FOR SITE WORK							
Sitework Costs	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
NEW CONSTRUCTION							
Construction	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
CONTINGENCY							
Construction Contingency	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Soft Cost Contingency	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
ARCHITECTURAL & ENGINEERING FEES							
Planning	\$280,000.00	\$280,000.00		\$0.00	\$0.00	\$280,000.00	\$0.00
Design	\$370,000.00	\$370,000.00		\$0.00	\$0.00	\$370,000.00	\$0.00
Environmental Assessment (EA)	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Engineering Fees	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Landscape Architect	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
LEED Certification	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Reimbursables	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
INTERIM COSTS							
Construction Insurance	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Construction Interest	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Construction Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Construction Credit Enhancement	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Payment and Performance Bond	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Real Property Tax & Other Taxes	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
PERMITS AND FEES							
Building Permits	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
IRWS Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
DOH Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Special Inspections	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
SOFT COSTS							
Planning	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Property Appraisal	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Market Study	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Environmental Report	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
HAZOP/CHTC Fee (Good Faith Deposit)	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Advertising/Marketing	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Furniture	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Survey	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Accession/Cost Certification	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Working Capital	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
SYNCRATION COSTS							
Operational (Partnership)	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
FINANCING FEES & EXPENSES							
Permanent Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Title and Escrow	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Counsel's Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Lender's Counsel	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Lender's Out of Pocket	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
DEVELOPER'S FEES							
Developer's Overhead	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Developer's Fee	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
TOTAL COST BEFORE RESERVE	\$680,000.00	\$680,000.00		\$0.00	\$0.00	\$680,000.00	\$0.00
PROJECT RESERVES							
Operating Reserves	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Facilities	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
TOTAL PROJECT COST	\$680,000.00	\$680,000.00		\$0.00	\$0.00	\$680,000.00	\$0.00

**NEW MAUI BUS HUB
CURF FUNDS
Payment Request**

7/12/2018
2:47 PM

SCOPE OF WORK	INITIAL APPROVED BUDGET	CURRENT APPROVED BUDGET	% COMP	COST TO DATE PREVIOUS	COST TO DATE NEW	BALANCE	YTD REQUEST
LAND							
Land	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
FOR SITE WORK							
Shelving Costs	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
NEW CONSTRUCTION							
Construction	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Equipment	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
CONTINGENCY							
Construction Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Soft Cost Contingency	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
ARCHITECTURAL & ENGINEERING FEES							
Plans	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Design	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Environmental Assessment (EA)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Engineering Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Landscape Architect	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
LEED Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Permits/Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
SYSTEM COSTS							
Construction Insurance	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Interest	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Construction Credit Enhancement	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Payment and Performance Bond	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Real Property Tax & Other Taxes	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
PERMITS AND FEES							
Building Permits	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
DEIR Fees	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
DCR Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Special Inspections	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
SOFT COSTS							
Planning	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Property Appraisal	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Market Study	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Environmental Report	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Historic Landmark Fee (Landmark Deposit)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Architectural/Marketing	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Public Art	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Survey	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Accounting/Cost Certification	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Working Capital	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
SYNCRATION COSTS							
Construction (Permitted)	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
FINANCING FEES & REVENUE							
Permanent Loan Origination Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Title and Recording	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
County's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Landmark's Counsel	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Landmark's Out of Pocket	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
DEVELOPER'S FEES							
Developer's Counsel	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Developer's Fee	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
TOTAL COST BEFORE REVENUE	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
PROJECT REVENUE							
Construction Revenue	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
Revenue	\$0.00	\$0.00		\$0.00	\$0.00	0.00	\$0.00
TOTAL PROJECT COST	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00

No. 1 No. 2

LAND

Land

FOR SITE WORK

Sitework Costs

NEW CONSTRUCTION

Construction

Equipment

CONTINGENCY

Construction Contingency

Soft Cost Contingency

ARCHITECTURAL & ENGINEERING FEES

Plans

Design

Environmental Assessment (EA)

Engineering Fees

Landscape Architect

LEED Certification

Reimbursables

INTERIM COSTS

Construction Insurance

Construction Interest

Construction Loan Origination Fee

Construction Credit Enhancement

Payment and Performance Bond

Real Property Tax & Other Taxes

0

0

0

0

PERMITS AND FEES

Building Permits

BWS Fees

DOE Fee

Special Inspections

SOFT COSTS

Planning

Property Appraisal

Market Study

Environmental Report

HHFDC LIHTC Fee/(Good Faith Deposit)

Advertising/Marketing

Furnishings

Survey

Accounting/Cost Certification

Working Capital

0

SYNDICATION COSTS

Organizational (Partnership)

FINANCING FEES & EXPENSES

Permanent Loan Origination Fee
Title and Recording
Counsel's Fee
Lender's Counsel
Lender's Out of Pocket

DEVELOPER'S FEES

Developer's Overhead
Developer's Fee

TOTAL COST BEFORE RESERV	0	0	0	0	0
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PROJECT RESERVES

Operating Reserves
Escrows

TOTAL PROJECT COST	0	0	0	0	0
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**INSURANCE REQUIREMENTS
NEW MAUI BUS HUB**

The policy or policies of insurance maintained by the County shall provide the following minimum policy limits and coverages:

Coverage	Minimum Policy Limits
Commercial General Liability and Automobile Insurance	The County's commercial general liability and automobile liability, including products and completed operations coverage, and automobile liability insurance shall be written on occurrence form and contain broad form property damage and bodily injury coverage of a combined single limit of not less than \$3,000,000 per occurrence and \$5,000,000 in the aggregate arising out of or in connection with operations performed under this MOU. Automobile insurance, and basic no-fault and personal injury protection as required by Hawaii laws, shall be no less than \$1,000,000 per accident. If the County does not own automobiles, it shall maintain Hired & Non-owned Automobile Liability coverage.
Pollution Liability	The County shall obtain at the County's expense, and shall keep in effect during this MOU, Pollution Liability Insurance covering the County's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by the County all arising out of the County's use of the Property. Combined single limit per occurrence may not be less than \$3,000,000. Annual aggregate limit may not be less than \$3,000,000. The policy shall name the State of Hawaii, DLNR, DAGS and HHFDC as additional insureds.
Workers' Compensation	As required by Hawaii laws
Property	Including Windstorm written on a replacement cost basis in an amount not less than 100% of the replacement cost of the buildings and contents, including betterments and improvements, made by the County, located on the premises. The County shall be responsible for any deductible or self-insurance retention, and to provide these coverages on a primary basis. State of Hawaii, DLNR, DAGS and HHFDC shall be loss payees under the Property

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EXHIBIT D

EXHIBIT D

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	Insurance. Coverage should be evidenced on form Acord 27 – Evidence of Property Insurance.
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The Commercial General Liability Insurance and the Automobile Insurance shall contain the following provisions:

1. It is agreed that any insurance maintained by the State of Hawaii shall apply in excess of and not contribute with insurance provided by this policy.
2. The State of Hawaii, DLNR, DAGS and HHFDC are added as additional insured parties for operations performed on the Property under this MOU.
3. Insurance shall include a cross liability or severability of interest clause.
4. The County shall immediately provide written notice to HHFDC should any of the insurance policies evidenced on the County's Certificate of Insurance form be cancelled, limited in scope, or not renewed upon expiration.

The above required insurance shall be primary and shall cover the insured for all operations to be performed under this MOU and on the Property, all operations performed incidentally, directly or indirectly connected with all operations to be performed under this MOU and on the Property, including operations performed outside the work area and all change order work.

The County agrees to a Waiver of Subrogation for each required policy described herein. When required by the insurer, or should a policy condition not permit the County to enter into a pre-loss agreement to waive subrogation without an endorsement, the County shall notify the insurer and request that the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy, which includes a condition specifically prohibiting such an endorsement, or voids coverage should the County enter into such an agreement on a pre-loss basis.

The County agrees to deposit with HHFDC, on or before the Effective Date of this MOU, certificates of insurance necessary to satisfy HHFDC that the insurance provisions of this MOU have been complied with. The County further agrees to keep such insurance in effect and current certificates of insurance on deposit with HHFDC during the entire term of this MOU. The certificates of insurance shall refer to this MOU.

HHFDC shall retain the right at any time to review and approve coverage, form, and amount of the insurance required by this MOU. If, in the reasonable opinion of HHFDC, the insurance provisions in this MOU do not provide adequate protection for HHFDC, HHFDC may require the County to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. HHFDC's requirements shall be reasonable but shall be designed with due regard to the then prevailing prudent business practice in the State of Hawaii to assure protection from and against the kind of and the extent of risks which exist at the time a change in insurance is required.

HHFDC shall notify the County in writing of any changes in the insurance requirements desired by HHFDC. If the County does not deposit copies of insurance policies with HHFDC incorporating such changes requested by HHFDC within sixty (60) days of receipt of such notice, this MOU shall be in default without further notice to the County and HHFDC shall be entitled to all legal remedies, including termination of this MOU, and the County shall be liable for all damages, costs, and fees. If any such insurance changes shall not be available at commercially reasonable rates, the County shall have the right to contest HHFDC's request.

The procuring of the required policy or policies of insurance shall not be construed to limit the County's liability under this MOU nor to fulfill the indemnification provisions and requirements of this MOU. Notwithstanding the policy or policies of insurance, the County shall be obligated for the total amount of any damage, injury, or loss incurred under or related to this MOU to the extent the County is liable therefor under this MOU.

All rights or claims of subrogation against the State of Hawaii, DLNR, DAGS and HHFDC, their officers, employees, and agents are waived.

The County shall procure from each of the insurers under all policies of insurance obtained pursuant to the provisions of this MOU, including but not limited to public liability and fire insurance, a waiver of all rights of subrogation which said insurer might otherwise have, as against the other party hereto, said waiver to be in writing and for the express benefit of the other.