

ORDINANCE NO. _____

BILL NO. 15 (2024)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF
THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL
AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION, REGARDING THE ANALYSIS OF IMPEDIMENTS TO FAIR
HOUSING CHOICE

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

SECTION 1. Purpose. As a condition of receiving federal Housing and Urban Development Community Planning and Development program funds such as HOME, CDBG, ESG HOPWA, NAHASDA, and public housing funds, grantees such as the County of Maui, State of Hawaii agencies, and all other counties within the state (collectively, the “Participants”), must certify that they are affirmatively furthering fair housing and the purposes of the Fair Housing Act. Participants are required to conduct an analysis of impediments to fair housing choice within their respective jurisdictions. Participants agreed to coordinate their efforts and the Hawaii Housing Finance and Development Corporation (“HHFDC”) will serve as the lead agency in procuring the services of the University of Hawaii (“UH”) to complete the required analysis. Participants are responsible for contributing a pro-rata share of the joint study conducted by UH regarding the fair housing analysis of impediments and formation of a plan to remove the impediments. The agreement to allow HHFDC to contract and pay UH for the joint study and the County’s responsibility to contribute its pro-rata share of \$33,363 to HHFDC, as well other terms and conditions, is more fully

described in the Memorandum of Agreement Analysis of Impediments to Fair Housing Choice ("Agreement"), attached hereto as Exhibit "1" and incorporated herein.

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

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

The Council agrees to authorize the Mayor or his authorized representative to execute the Agreement attached as Exhibit "1" and all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance takes effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



KRISTINA C. TOSHIKIYO
Deputy Corporation Counsel
County of Maui

LF 2023-2185
2024-01-04 Ord IGA HHFDC Analysis Fair Housing Choice

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Mr. R. Lee", is written above a horizontal line.

Upon the request of the Mayor.

**MEMORANDUM OF AGREEMENT
ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE**

This MEMORANDUM OF AGREEMENT (this "Agreement") made on this _____ day of _____, 2023, is entered into 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, the principal place of business and mailing address of which is 677 Queen Street, Suite 300, Honolulu, Hawaii 96813, and the [COUNTY/ PARTICIPATING AGENCY] (hereinafter referred to as the "Subject Participant"), a [Subject Participant's legal description of its entity], the principal place of business and mailing address of which is [Subject Participant's address].

RECITALS

- A. HHFDC; the Department of Hawaiian Home Lands ("DHHL"); the Hawaii Public Housing Authority ("HPHA"); the City and County of Honolulu, Department of Community Services ("DCS"); the County of Hawaii, Office of Housing and Community Development ("OHCD"); the County of Maui, Department of Housing and Human Concerns ("DHHC"); and the Kauai County Housing Agency ("KCHA") (collectively the "Participants") each receives funding from the U.S. Department of Housing and Urban Development ("HUD"), such as HOME, CDBG, ESG, HOPWA, NAHASDA, and public housing funds. Recipients of such HUD funds are legally required to affirmatively further fair housing ("AFFH") and the purposes of the Fair Housing Act.
- B. As part of their AFFH obligation, the Participants must certify that they are affirmatively furthering fair housing. This means that Participants must conduct an analysis of impediments to fair housing choice within their jurisdictions, take appropriate actions to overcome the effects of any impediments identified through that analysis, and maintain records reflecting that analysis and any actions taken.
- C. To ensure consistency in the analysis of impediments to fair housing choice within the State of Hawaii, the Participants have agreed to coordinate their efforts. HHFDC has agreed to serve as the lead agency in procuring the services of a contractor to complete the required analysis.
- D. The Participants met with staff from the University of Hawaii ("UH") to discuss entering into a contract to conduct the analysis of impediments to fair housing choice. UH is qualified to perform the services given its background and experience with fair housing. UH agreed to perform the services necessary to prepare an analysis of impediments to fair housing choice for the benefit of the Participants. The Proposed Scope of Work prepared by UHERO and agreed upon by the Participants is incorporated herein by reference and attached as Exhibit 1.

- E. Because UH is a governmental body, the Procurement Code in Chapter 103D, Hawaii Revised Statutes ("HRS"), does not apply to this Agreement pursuant to Section 103D-102(b)(3), HRS, which states that this chapter shall not apply to contracts by governmental bodies to procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision.
- F. Because each Participant is a governmental body and each will disburse funds to HHFDC, which is also a governmental body, the Procurement Code in Chapter 103D, HRS, does not apply to this Agreement pursuant to 103D-102(b)(2)(G), HRS, which states that this chapter shall not apply to contracts by governmental bodies to disburse funds, irrespective of their source, to governmental bodies of the State.
- G. The Participants have agreed to participate in a joint study to be conducted by UH.

PURPOSE

The purpose of this Agreement is to allow HHFDC to contract and pay for the Subject Participant's pro-rata share of the joint study to be conducted by UH regarding the fair housing analysis of impediments and the formulation of a plan to remove the impediments. This Agreement sets forth the terms, conditions, and responsibilities of HHFDC and the Subject Participant with respect to participation in the study and payment for the study. This Agreement will allow the Subject Participant to transfer funds to HHFDC for this purpose.

AGREEMENT

In consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, HHFDC and the Subject Participant agree as follows:

1. Responsibilities of HHFDC.
 - a. Monitor UH's work with the assistance of the Participants.
 - b. Inform the Participants monthly of the progress of UH's work.
 - c. Coordinate the review by the Participants of interim reports prepared by UH.
 - d. Distribute the final report and supporting data to the Participants in an electronic format.
 - e. Fund the total cost of the contract between HHFDC and UH (the "UH Contract") in the amount of Two Hundred Thirty-Three Thousand Five Hundred Forty-One and 00/100 Dollars (\$233,541.00). HHFDC shall issue a Notice to Proceed to UH to commence work under the UH Contract once payment has been received by all Participants.

2. Responsibilities of the Subject Participant.

- a. Review the draft and final reports prepared by UH and provide comments to HHFDC, no later than three (3) weeks after the date such report is received by the Subject Participant.
- b. Work with HHFDC to assist UH in the research of impediments and formulation of a plan relating to Subject Participant's jurisdiction.
- c. Fund the Subject Participant's share of the UH Contract amount in accordance with the below schedule.

HHFDC	\$33,363.00
HPHA	\$33,363.00
DHHL	\$33,363.00
DCS	\$33,363.00
OHCD	\$33,363.00
DHHC	\$33,363.00
KCHA	<u>\$33,363.00</u>
TOTAL COST OF UH CONTRACT:	\$233,541.00

If the total final cost of the UH Contract exceeds \$233,541.00, it is agreed that HHFDC and the Participants shall renegotiate the share amount or adjust UH's scope of work, subject to mutual agreement between HHFDC and UH and subject to the Subject Participant's availability of funds.

3. Duration and Termination. This Agreement is effective upon the date of execution and shall remain in effect until both parties have completed their respective responsibilities set forth in Paragraphs 1 and 2 of this Agreement.

This Agreement may be terminated without cause by either party by giving the other party written notice, specifying the effective date of the termination, at least thirty (30) days prior to the effective date of the termination.

4. Force Majeure. Each party agrees to use its best efforts to advance the objectives of this Agreement. Each party acknowledges and agrees that, notwithstanding such best efforts, there may be circumstances beyond the control of a party or parties that preclude performance or prevent the achievement of the project scope. It is agreed that no party shall hold any other party liable for such inability to perform due to circumstances beyond the control of such party.
5. Amendments to the Agreement. This Agreement may be amended at any time only by written mutual agreement of the parties hereto.
6. No Assignment. The parties shall not subcontract, assign, or transfer any interest in all or part of the services to be performed under this Agreement without the prior

written consent and approval of HHFDC. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which is a party to this Agreement, nor shall this Agreement be construed as creating or giving any rights or benefits to anyone other than HHFDC and the Subject Participant.

7. Time of Essence. Performance of this Agreement shall commence on the effective date of the Agreement and all work shall be completed as expeditiously as possible, except as modified by mutual agreement or unless this Agreement is sooner terminated.
8. Confidentiality of Material. To the extent permitted by applicable law, including but not limited to Chapter 92F (Uniform Information Practices Act, Modified), HRS, any information, data, report, record, or other material marked "Confidential" and given to the Subject Participant by HHFDC under this Agreement shall not be made available to any individual or organization by the Subject Participant without the prior written consent of HHFDC, provided that consent shall not be unreasonably withheld. The foregoing restriction shall not apply to any information, data, report, record or other material that: (a) is independently known by the Subject Participant prior to receipt from HHFDC; (b) is disclosed to the Subject Participant by a third party with the legal authority to do so; (c) is or becomes public through no fault of the Subject Participant; (d) is independently developed by the Subject Participant; or (e) is required to be disclosed pursuant to law or court order.
9. Counterparts. This Agreement may be executed by the parties in counterparts. The counterparts executed by the parties named in this Agreement shall constitute a single binding Agreement, notwithstanding that all parties might not be signatories to the same counterpart. Each counterpart shall constitute an original.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, HHFDC and the Subject Participant have executed this Agreement on this _____ day of _____, 2023.

APPROVED AS TO FORM:

HAWAII HOUSING FINANCE AND
DEVELOPMENT CORPORATION

Deputy Attorney General
State of Hawaii
Date: _____

Dean Minakami
Executive Director
"HHFDC"

[Signatures continue on next page]

RECOMMEND APPROVAL:

CITY AND COUNTY OF HONOLULU

Department of Community Services

By: _____
Name: Andrew T. Kawano
Director of Budget and Fiscal Services
"Subject Participant"

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel

COUNTY OF KAUAI

Recommended Approval

Adam P. Roversi
Housing Director

Michelle Lizama
Director of Finance

APPROVED AS TO FORM AND LEGALITY

Jenna Tatsey
Deputy County Attorney

COUNTY OF MAUI

Approval Recommended:

Lori Tshako
Director, Department of Housing and Human Concerns
County of Maui

APPROVED AS TO FORM AND
LEGALITY:

COUNTY OF MAUI

Deputy Corporation Counsel
County of Maui

By:

Richard T. Bissen, Jr.
Mayor

Date: _____

Date: _____

**PROPOSED SCOPE OF WORK
FOR THE ANALYSIS OF IMPEDIMENTS TO FAIR HOUSING CHOICE IN HAWAII**

Jennifer Darrah, PI
Department of Sociology, UH Mānoa

Philip ME Garboden, Co-PI
UHERO and Department of Urban and Regional Planning, UH Mānoa
Crown School of Social Work, Policy, and Practice, University of Chicago

The following scope of work is based on the draft SOW prepared in consultation with each agency. Costs are reflected in attached budget (subject to minor adjustments as proposal moves through contractual process).

Data Collection and Analysis Plan. We will prepare a set of statistical analysis designed to highlight impediments to fair housing. This analysis will include:

- a. **Analyzing HUD-Provided Maps and Tables:** HUD has provided data through maps and tables, available on the HUD Exchange or at <https://egis.hud.gov/affht/>. While we will utilize these tools to ensure compliance with HUD regulation, we also recognize that these tools were designed for widescale use. We plan to supplement these baseline analyses with alternative tabulations that better reflect the demographic makeup of the state. All the data necessary for this component is publicly available.

These analyses will include a focus on **segregation and integration of protected classes**. We will consider the demographic distribution of Hawai'i residents and identify disproportionate distributions across census tracts and zip codes.

Using the same data, we will identify **racially and ethnically concentrated areas of poverty and affluence (RCAPE/ECAP, RCAA/ECAA)**. Once these areas have been identified we will analyze factors that create or perpetuate these areas or that prevent de-concentration.

Finally we will identify areas/neighborhoods of opportunity, i.e. places with conditions that promote upward mobility and educational opportunity (such as educational resources, employment, healthcare, transportation, retail, public services, low-crime/safety features, recreational resources, etc.). We will identify factors that may reinforce disparities in neighborhood place-based resources and look at the relative presence or absence of protected classes in these communities.

The following components shall be analyzed at both the statewide and local levels:

- b. **Gathering Local Information:** We will supplement these analyses of publicly available national data with a thorough review and high-quality statistical analysis of local data sources. This will include information gathered through the community participation process and by consulting state or county planning departments, academics, UHERO data

EXHIBIT " A "

systems, and others with knowledge of the local area or whose work impacts housing.

- c. **Public Policies:** Utilizing stakeholder interviews and secondary source material, we will examine and evaluate public policies and practices, which affect the provision of fair housing including, but not limited to, public services, state and local laws, ordinances and regulations, planning and zoning laws and decisions, land use regulations, community development funding policies and practices in areas of low and high opportunity, procedures and practices of the local public housing authority, and property tax policies.
- d. **Private Market Activity:** Utilizing stakeholder interviews, secondary source material, and publicly available data, we will identify private market issues that relate to the sale and distribution of affordable housing, including the provision of brokerage services, mortgage lending, insurance sales and underwriting, and property appraisal. Also, we will consider other factors implicated in the distribution of and access of protected classes to affordable rental housing including landlord selection processes and property management.
- e. **Fair Housing Environment:** Assuming Participants can facilitate access, we will review complaints by tenants or other advocates regarding fair housing issues that have been made to state and county housing agencies (for example by review of call logs of tenant reports provided by cooperating agencies), fair housing enforcement agencies, and protected class advocacy organizations, including, but not limited to: HUD, the Hawai'i Civil Rights Commission, the Disability and Communication Access Board, the Legal Aid Society of Hawaii, the Hawaii Disability Rights Center, the University of Hawai'i's Center for Disabilities Studies, and Mental Health Hawai'i to review housing discrimination assertions and complaints, violations, or civil actions against housing providers from July 1, 2018 to present. Note that we cannot guarantee *a priori* that each of these organizations will be allowed to share data. Using the data that is made available, we shall determine the nature, extent, and disposition of reported housing discrimination.

Specific Areas of Inquiry: As discussed by the committee, we will augment the analyses above with two targeted research areas:

Preferences: Given the scarcity of affordable housing, it is common for agencies and nonprofits to implement preference systems that prioritize particular subgroups of needy individuals. We will examine and evaluate the current use of preferences (including durational preferences, timeliness versus lottery systems) and tiered systems in the tenant selection process. We will assess the appropriateness, lawfulness, and implications from a fair housing perspective of each process. We will also conduct a systematic legal and policy review of such systems, including as implemented in other locations, in order to inform policy design in Hawai'i.

NIMBY "Not in my Backyard": Local Resistance to affordable projects: Many affordable housing developments struggle or fail to gain needed political and public support due to opposition from neighbors or other local stakeholders. Such local opposition is particularly complex in Hawai'i given the state's finite ecological resources,

limited land area available for housing development, land sovereignty disputes, obligations to Native Hawaiian claimants and other beneficiaries, and other factors. Using stakeholder interviews and other background data, we will examine the source, quality, and tactics of public opposition to (and support for) specific affordable housing projects across the state, in order to understand and then mitigate such barriers to future fair housing provision.

Native Hawaiians and native Hawaiian Fair Housing issues

Native Hawaiians (the Indigenous people of Hawai‘i, including those who do and those who do not qualify for a DHHL lease) and native Hawaiians (those "Native Hawaiians" who do qualify for a DHHL lease) should be included in each of the steps above in light of the specific trust obligations of agencies such as DHHL. Native Hawaiian legal and policy experts will help facilitate the data gathering process to ensure the inclusion of Native Hawaiian voices, and analysis of the results specific to Native Hawaiians and native Hawaiians. Targeted policy review of applicable laws and background materials as well as stakeholder interviews will be conducted in consultation with Participants to address specific questions, including those related to the provision of rental housing for DHHL beneficiaries

2. **Facilitate a Public Participation Process:** The Consultant shall assist Participants in engaging community stakeholders to deliberate on fair housing concerns, ideas, and analysis through focus groups, community meetings, surveys, or other effective outreach methods. One potential venue is the City and County of Honolulu Fair Housing Training held in April 2024. The Consultant shall:
 - a. document the public participation process;
 - b. prepare agendas, handouts, and other presentation materials;
 - c. facilitate and present data at focus groups and public meetings; and
 - d. summarize outreach efforts and comments received in writing or orally at public meetings during the community participation process.
3. **Identifying Impediments and Corrective Actions:** We shall identify a list of impediments to fair housing listed in order of priority with proposed methods of corrective actions. For each impediment, the we shall:
 - a. identify contributing factor(s) to the impediment;
 - b. recommend corrective actions and activities based on a realistic assessment of available resources that the Participants can undertake to improve organizational accountability for affirmatively furthering fair housing;
 - c. identify the metrics and milestones (including timeframe) for determining fair housing results to be achieved, when feasible; and

- d. identify the responsible party for each corrective action or activity, when possible.
4. **Submission of draft and final AI report:** We shall submit individual draft reports to each Participant, by August 1, 2024, and individual final reports to each participating agency by December 31, 2024. The Consultant shall provide one (1) electronic copy of each draft and final report to each Participant. These reports are expected to be substantively identical save for minor frontmatter adjustments. The reports will follow best practices for clear analytic writing accessible to a general audience.
 5. **Monthly Status Reports:** We shall submit to HHFDC monthly status reports via email indicating the percentage of work completed to date, accomplishments in the past month, objectives for the next month, current significant activities, critical actions and/or concerns requiring completion and/or resolution priority, and a summary status. We shall be available for questions until final payment is rendered.
 6. **Responsibilities upon completion of AI:** Except for those data protected by human subject protections such as interview transcripts or other identifiable human data that could compromise anonymity, we shall provide HHFDC with access to data and methodology used in determining the impediments and subsequent recommendations. We shall be available to present the findings of the report in a live presentation to the Participants' boards and/or councils.
 7. **Proposed Payment Schedule:**

The total budget proposed is **\$233,541.00**. The approximate payment and invoice schedule will proceed as indicated below. Invoice will be submitted by University of Hawaii (Office of Research Services).

Payment Schedule

Approximate dates			Percentage of Final Payment
January 1 2024	Invoice 1 – due upon execution of MOU and completion of work plan	\$93,416.38	40%
March 1 2024	Invoice 2 – due upon summary of interim data analysis	\$93,416.38	30%
August 1 2024	Invoice 3- due upon preliminary report, summary of themes and findings	\$35,031.14	15%
December 20 2024	Invoice 4 due upon submission of final report and presentation	\$35,031.14	15%
Total to be Invoiced		\$233,541	\$233,541

DIGEST

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AGREEMENT WITH THE HAWAII HOUSING FINANCE AND DEVELOPMENT
CORPORATION, REGARDING THE ANALYSIS OF IMPEDIMENTS TO FAIR
HOUSING CHOICE


This bill proposes to authorize the County to enter into a Memorandum of Agreement with the Hawaii Housing Finance and Development Corporation to contribute \$33,363 (Maui County's portion) for the 2025 Analysis of Impediments to Fair Housing Choice Report.

I, MOANA M. LUTEY, County Clerk of the County of Maui, State of Hawaii, DO
HEREBY CERTIFY that the foregoing BILL NO. 15 (2024) was passed on First Reading
by the Council of the County of Maui, State of Hawaii, on the 26th day of January, 2024,
by the following vote:

AYES: Councilmembers Tom Cook, Gabriel Johnson, Natalie A. Kama,
Keani N. W. Rawlins-Fernandez, Tamara A. M. Paltin, Shane M.
Sinenci, Nohelani U'u-Hodgins, Vice-Chair Yuki Lei K. Sugimura,
and Chair Alice L. Lee.

NOES: None.

DATED at Wailuku, Maui, Hawaii, this 8th of February, 2024.



MOANA M. LUTEY, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk,
County of Maui, for use and examination by the public.