

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
KAKAAKO
Honolulu, Hawaii, 96813

September 6, 2017

Chairperson and Members
Hawaii Community Development Authority
State of Hawaii
Honolulu, Hawaii

HCDA Kakaako Board Members:

SUBJECT:

Shall the Authority Authorize the Executive Director to Execute a Final Form of the 35-Year Lease of the Net Shed Building at Kewalo Basin with Kupu?

SUMMARY:

Kupu requests execution of a 35-year ground lease at a base rent of \$1/year to operate its programming at the Net Shed building. The ground lease would be contingent upon the approval of a Development Permit for the improvements to the Net Shed building.

AUTHORITIES:

On April 5, 2017, the Authority directed the Executive Director to negotiate a long term lease of the Net Shed Building at Kewalo Basin with Kupu, subject to certain terms and conditions.

On August 2, 2017, the Authority directed HCDA staff to incorporate certain comments into a revised draft lease and circulate the revised draft lease for board review and action at a later date.

BACKGROUND:

Kupu is currently operating its "Community Program and Hawaii Youth Conservations Corps Program" out of the Net Shed building on a month-to-month lease that was granted by the HCDA on November 1, 2010.

In its request for a long term lease, Kupu stated it desires to renovate the Net Shed for use as an educational, cultural and community center as follows:

- Classroom and workshop space for workshops on culture and sustainability;
- Art exhibits featuring local artists;
- Exploratorium space for exhibits on sustainability, Hawaii culture and renewable energy, Symposium and event hosting;

- Community-based events and workshops and microenterprise facilities such as aquaponics;
- Community service engagement for broader public;
- Temporary food service, such as a farm-to-table food truck;
- An accessory kitchen and imu to provide food for visitors and events; and
- Renting the Net Shed for events by other groups following a model similar to what was implemented at the McCoy Pavilion.

April 2017 Board Meeting. On April 5, 2017, the Authority found the aforementioned usage was consistent with the purpose and intent of the Makai area plan and rules. The April 5, 2017 Kakaako Meeting Minutes and Staff Report are attached hereto as Exhibits B and C, respectively. The Authority approved the negotiation of a long term lease of the Net Shed Building to Kupu subject to the following terms and conditions:

1. Initial term of 15 years, with two 10-year options to extend;
2. No increase in floor area of the existing Net Shed building;
3. All uses shall be consistent with the Makai area rules;
4. Public use is accommodated at Net Shed;
5. The approval of the lease is contingent upon acceptance of a development permit. If the permit is denied, the lease will be terminated; and
6. The lease shall come back before the Authority for final approval.

August 2017 Board Meeting. On August, 2, 2017, the Authority failed to pass a motion to execute a 35-Year Lease of the Net Shed Building at Kewalo Basin with Kupu as presented. Some Authority Members raised issues with the lease and directed staff to revise the lease.

Following the August 2017 meeting, HCDA staff worked to incorporate Authority Member's comments into a revised draft lease. Authority Members were given a week to review the draft lease and to make further comments. Comments were received from seven of the 10 members. The revised draft lease is attached hereto as Exhibit A.

ANALYSIS:

The revised draft lease incorporates the majority of comments raised by Authority Members at the August 2, 2017 Authority meeting and also subsequent comments that were submitted by email. The following notable provisions remain unchanged from the lease reviewed by the board at the August 2, 2017 meeting:

1. No commercial activity will be allowed at Net Shed. All usage shall be related to Kupu programs (e.g., Kupu provides catering/setup services for events). Kupu shall not engage in any sales activities that are unrelated to its programs (Section 7.16 (d), page 28);

2. No "Net Cash Flow From Non-Program Uses." Kupu may recover costs from third parties; however, rental of the facilities shall not be used for profit generation. Kupu previously proposed sharing 10 percent of net cash flow from non-program uses with HCDA, however HCDA staff believes the facility should not be used for profit generation by non-program uses (Section 6.16, page 23);
3. Failure to meet Project Milestones may result in lease termination (Section 4.4 (f), page 9);
4. Kupu will be solely responsible for sub-metering the site for water, sewer, and electricity services in addition to paying for all utilities. Kupu will also provide a dedicated trash dumpster for Net Shed at its own expense (Section 5.2, page 12);
5. The public must be allowed to use and reserve the facility when it is available, on a first come, first served basis. Kupu will publicize a community calendar with availability and cost recovery fees. HCDA will be entitled to review schedule and fees as needed (Section 6.13, pages 22-23);
6. Facility uses must adhere to Makai Area Rules and Park Rules (HAR Chapter 15-210). HCDA Park Permits will be issued for events as required by the Park Rules (e.g., gatherings of over 50 people, events serving alcohol, commercial photography/videography, etc.) (Section 6.14, page 23); and
7. Facility users are prohibited from parking vehicles in the Kewalo Basin Park parking lot. Kupu will secure a separate parking agreement with another entity to guarantee patron parking prior to lease execution. (Section 6.15, page 23).

To address Members' further comments, the following additional edits were made to the final draft lease:

1. Kupu further emphasized its public mission in the Recitals (Recitals, page 1);
2. "Community Events" was further limited to only events that benefit the community and are open to the public, prohibiting private parties or events that do not provide a benefit to the community (Section 6.13, page 22);
3. Annual reporting was added as a requirement to provide a rough accounting of annual expenses/ budget and demographics on patrons served (Section 6.17, page 23); and
4. Definition of "Permitted Uses" was revised to eliminate the reference to event space usage or rentals (Section 7.16, page 28).

Some Members requested the addition of lease rent or percentage rent, however, this would run contrary to the prohibition on commercial activity at Net Shed. HCDA Staff made the conscious decision to prohibit commercial activity, thereby eliminating profit generation at Net Shed. This

was done to reinforce the Net Shed as a component of the Park and to further HCDA's mission in the Kakaako Community Development District. It is HCDA Staff's belief that Kupu's programming of Net Shed would further activate the Kewalo Basin area and contribute to the building of a strong community. Kupu stated it cannot pay market rent without allowing for profit generation at Net Shed.

Importantly, the lease of Net Shed to Kupu saves over \$200,000 in avoided costs to the HCDA, as highlighted in Exhibit D. Although Kupu would pay nominal lease rent, Kupu would provide valuable in-kind services that would otherwise come at a cost to the HCDA.

Kupu agrees to provide landscaping and maintenance services to HCDA's other properties, including the maintenance of 'iwi kupuna, or Native Hawaiian burial sites throughout the Kakaako Community Development District. Kupu's presence at the dead end of Kewalo Basin Harbor also keeps Kewalo Basin Park relatively clear of park rule violations and community safety issues. Without Kupu's presence, the HCDA would likely spend much more on its contracted services to ensure the park is kept clean, safe, and secure.

RECOMMENDATION

Staff recommends that the Authority Authorize the Executive Director to Execute a Final Form of the 35-Year Lease of the Net Shed Building at Kewalo Basin with Kupu.

Respectfully submitted,



Lindsey Doi
Asset Manager

APPROVED FOR SUBMITTAL:



Jesse K. Souki, Executive Director
Hawaii Community Development Authority

Attachments:

- Exhibit A – Draft Kupu Lease
- Exhibit B- April 5, 2017 Kakaako Meeting Minutes
- Exhibit C- April 5, 2017 Kupu Lease Staff Report
- Exhibit D – HCDA Avoided Costs With Kupu Lease
- Exhibit E – Background Information Packet