

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Kakaako Community Development District
Honolulu, HI 96813

September 6, 2017

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

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Executive Director to Execute the Economic Development Administration's *Certificate as to Project Site, Rights-of-Way, and Easements, Part Three, Owners Certification Regarding Eminent Domain*, and the *Covenant of Purpose, Use and Ownership*, as Required Under the Economic Development Grant No. 070107127 for the Entrepreneur's Sandbox Project?

SUMMARY:

The Authority is being asked to authorize the Executive Director, to sign Part Three of the U.S. Department of Commerce Economic Development Administration's ("EDA") *Certificate as to Project Site, Rights-of-Way, and Easements form* ("Site Certificate"), and a *Covenant of Purpose, Use and Ownership* ("Covenant"), as required under the EDA Grant terms, awarded to the Hawaii Community Development Authority ("HCDA") and High Technology Development Corporation ("HTDC"), for construction of the Entrepreneurs Sandbox ("Project").

AUTHORITIES:

Hawaii Revised Statutes § 206E-4

BACKGROUND:

- On September 19, 2014, after applying for federal financial assistance, the HTDC and HCDA were issued a U.S. Department of Commerce EDA grant award for \$3.0 million for the construction of the Entrepreneur's Sandbox.
- On October 1, 2014, the Authority authorized the Executive Director to enter into a memorandum of understanding with the HTDC documenting HCDA's and HTDC's respective roles and responsibilities regarding the EDA grant application for the Entrepreneur's Sandbox.
- On November 4, 2015, the Authority authorized the Executive Director to prepare and release a Request for Proposal for a civic/mixed-use commercial development on Lot C including the Sandbox for HTDC.

- On July 13, 2016, the Authority adopted the recommendation of the RFP Evaluation committee for a civic/mixed-use commercial development on Lot C (the Entrepreneur's Sandbox and Innovation Hale) and authorized the Executive Director to negotiate a development agreement with Stanford Carr Development LLC.

The development agreement with Stanford Carr Development LLC is being finalized and will be brought to the Authority for approval under a separate request. The HCDA and HTDC continue to address EDA due diligence requirements to comply with special conditions of the grant award, including the EDA Site Certificate, and a Covenant.

ANALYSIS:

Certificate as to Project Site, Rights-of-Way, and Easements

The Site Certificate is a 3-part form which satisfies EDA Special Award Condition number 17, and includes certifications that (1) the Project will be constructed wholly within the property; (2) that title is held in fee simple or a long-term lease; and (3) the land owner will not or has not used any available power of eminent domain to acquire title to Project property to advance the interests of private parties in connection with any property comprising the Project.

Part (3) above needs to be signed by the HCDA as the land owner. A copy of EDA Special Award Condition is provided as Exhibit A. The Site Certificate form is provided as Exhibit B.

Under Hawaii Revised Statutes (HRS) § 206E-4(9) the Authority has the power to acquire, or reacquire by condemnation real, personal, or mixed property or any interest therein for public facilities. HRS, § 206E-10 also provides for condemnation powers.

Covenant of Use, Purpose and Ownership

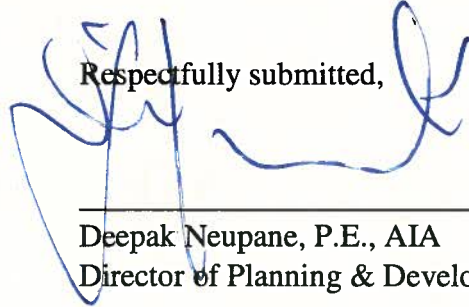
Under Special Award Condition number 24, the EDA requires a recorded mortgage or covenant to be executed and recorded to protect federal interest in its investment during the expected useful life of the Project. If during the Project's useful life, which is determined by the EDA to be 20 years, the Project is not being used for the authorized purpose, or if the property is disposed of, or encumbered without the EDA approval, the federal government may assert its right to its interest in the property to recover its federal share.

Since the HCDA will not record a mortgage on the property the Covenant will satisfy the EDA award condition and will run with the land for 20 years. The Covenant has been provided in form and substance by the EDA, and is provided as Exhibit C.

RECOMMENDATION:

Staff recommends the Authority authorize the Executive Director to execute the *Economic Development Administration Certificate as to Project Site, Rights-of-Way, and Easements, Part Three, Owners Certification Regarding Eminent Domain*, and the *Covenant of Purpose, Use and Ownership*, as required under the Economic Development Grant No. 070107127 for the Entrepreneur's Sandbox project.

Respectfully submitted,



Deepak Neupane, P.E., AIA
Director of Planning & Development

APPROVED FOR SUBMITTAL:



Jesse K. Souki, Executive Director
Hawaii Community Development Authority

Attachments

Exhibit A – EDA Special Award Conditions

Exhibit B – EDA Certificate as to Project Site, Rights-of-Way, and Easements

Exhibit C – Covenant of Purpose Use and Ownership