

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

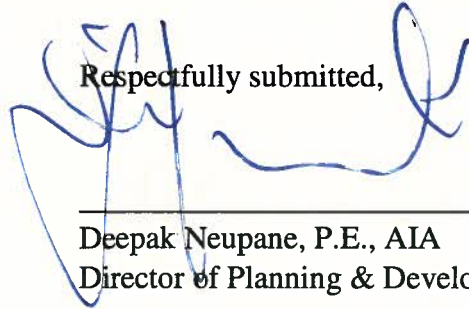
Under Special Award Condition number 24, the EDA requires a recorded mortgage or covenant to be executed and recorded to protect federal interest in its investment during the expected useful life of the Project. If during the Project's useful life, which is determined by the EDA to be 20 years, the Project 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

SPECIAL AWARD CONDITIONS
 U.S. DEPARTMENT OF COMMERCE
 Economic Development Administration (EDA)

Public Works and Economic Development Facilities Program
 under 42 U.S.C. §3141, Section 201 of the
 Public Works and Economic Development Act of 1965 (Public Law 89-136),
 as amended by the Economic Development Administration Reauthorization Act of 2004
 (Public Law 108-373)

Project Title: Entrepreneur's Sandbox-Kakaako Collaboration Center Construction Project	
Grantee Name: High Technology Development Corporation and Hawaii Community Development Authority	Project Number: 07 01 07127

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work* (Attachment 1). All work on this project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of a Form CD-451.
2. The Grantee Contact's name, title, address, and telephone number are:

Roberta L. K. Melton Executive Director and Chief Executive Officer Phone: (808) 539-3601 Email: robbie@htdc.org	High Technology Development Corporation 2800 Woodlawn Drive, Suite 100 Honolulu, Hawaii 96822
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3. The Grants Officer is authorized to award, amend, suspend, and terminate financial assistance awards. The Grants Officer is:

A. Leonard Smith Regional Director Fax: (206) 220-7659	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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4. The Federal Program Officer (Area Director) oversees the programmatic aspects of this Award. The Federal Program Officer is:

Kristine Skrinde Area Director Phone: (206) 220-7700 FAX: (206) 220-7669 Email: KSkrinde@eda.gov	Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012
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5. The EDA Project Officer is responsible for day-to-day administration and liaison with the Grantee and receives all reports and payment requests. The Project Officer is:

<p>Stan Good Civil Engineer Phone: (206) 220-7701 FAX: (206) 220-7669 Email: SGood@eda.gov</p>	<p>Economic Development Administration Seattle Regional Office 915 Second Avenue, Room 1890 Seattle, Washington 98174-1012</p>
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6. ADDITIONAL INCLUDED DOCUMENTS:

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award form (Form CD-450) the following additional documents are included with and considered to be part of the Award's terms and conditions:

- Authorized Scope of Work (Attachment 1); and

Should there be a discrepancy among these documents the Special Award Conditions (this document) and associated attachments hereto shall control.

- 7. PROJECT DEVELOPMENT TIME SCHEDULE:** The Grantee agrees to the following Project development time schedule:

<u>Deliverable</u>	<u>Submission Deadline</u>
Return of Executed Financial Assistance Award	30 calendar days after receipt of Form CD-450
Start of Construction	12 Months from Date of Award
Completion of Construction	48 Months from Date of Award
Authorized Award End Date	60 Months from Date of Award
Submission of Final Financial Report on Standard Form 425	No later than 90 calendar days after Award End Date

Project Closeout – All Project closeout documents, including final financial reports (Standard Form 425) and any required program reports, shall be submitted to EDA not more than 90 calendar days after the date the Grantee accepts the completed project from the contractor(s).

The Grantee shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Grantee shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Grantee further acknowledges that failure to meet the development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 15 C.F.R. § 14.62 or 15 C.F.R. § 24.43, as applicable.

8. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

- A. AWARD DISBURSEMENTS: Reimbursable basis only:** EDA will make disbursements under this Award on a reimbursement basis only, in accord with the procedures outlined during the grant kick-off meeting.

The *Outlay Report and Request for Reimbursement for Construction Programs* (Standard Form 271) is used to request a disbursement, which shall be approved in writing by the Civil Engineer/Project Officer.

Please note that prior to the initial disbursement, Grantees must complete SF-3881, *ACH Vendor/Miscellaneous Payment Enrollment Form* and submit it to NOAA's Accounting Office by FAX to (301) 528-3675 (*FAX is required to secure confidentiality of sensitive information*). The form must be completed by the respective parties (EDA, Grantee Bank, and Grantee) at the start of each new award.

B. REPORTS:

- a. *Project Progress Reports*: The Grantee shall submit project progress reports to the Civil Engineer/Project Officer on a quarterly basis for the periods ending **December 31, March 31, June 30 and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted in accordance with the format required by the Project Officer and discussed during the project kick-off meeting. Reports are due no later than the 15th day of the month following the end of the quarterly period.
- b. *Financial Reports*: The Grantee shall submit a "*Federal Financial Report*" (Standard Form 425) on a semi-annual basis for the periods ending **March 31 and September 30**, or any portion thereof.

A Final Financial Report on Standard Form 425 must be submitted no more than 90 calendar days after the expiration date of the Award (e.g., the Award end date specified on the Form CD-450 or Form CD-451). Final Financial reports should follow the guidance outlined by the form instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period, and that all matching and program income (if applicable) is fully reported. Final grant rate and determinations of final balances owed to the government will be determined by the information on the final Standard Form 425, so it is imperative that this final financial form is submitted in a timely and accurate manner.

9. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined at the conclusion of the award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including the applicable *Cost Principles* and *Uniform Administrative Requirements*, after Final Financial Documents are submitted.

Except as otherwise expressly provided for within these Special Award Conditions, the Investment Rate for the award (see 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable costs incurred by the Grantee in connection with the project. The Federal share in the allowable costs shall be based upon the Investment Rate (see 15 C.F.R. § 14.2(s)). In the event of an under run in total allowable costs for this project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any, absent a determination by the Assistant Secretary (see 13 C.F.R. § 308.1).

Line Item Budget:

- A. Under the terms of the Award, the total approved authorized budget is:

Federal Share (EDA Funds)	\$3,000,000
Non-Federal Matching Share	<u>\$1,325,000</u>
Total Project Cost	\$4,325,000

- B. Under the terms of this Award, the total approved line item budget is:

COST CLASSIFICATION	Proposed	Approved
Administrative and legal expenses	\$0	\$0
Land, structures, rights-of-way, etc.	\$0	\$0
Relocation expenses and payments	\$0	\$0
Architectural and engineering fees	\$0	\$0
Other architectural and engineering fees	\$0	\$0
Project inspection fees	\$0	\$0
Site work	\$0	\$0
Demolition and removal	\$0	\$0
Construction	\$3,900,000	\$3,900,000
Equipment	\$125,000	\$125,000
Contingencies	<u>\$300,000</u>	<u>\$300,000</u>
Total Project Costs	\$4,325,000	\$4,325,000

10. **FEDERAL SHARE:** The EDA participation in total eligible project costs will be limited to the EDA grant amount or the EDA share of total allowable project costs, based on the area's grant rate eligibility at the time of award, whichever is less.

11. MATCHING SHARE: The Grantee agrees to provide the Grantee's non-Federal Matching Share contribution for eligible project expenses in proportion to the Federal share requested for such project expenses. (See 13 C.F.R. § 300.3) The Grantee also certifies that, in accepting the Financial Assistance Award, the Grantee's Matching Share of the project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the project.

12. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: Treasury has given EDA two options for having payments deposited to EDA's account:

- i. The first one is Pay.Gov. This option allows the payee to pay EDA through the Internet. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- ii. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Project Officer. This option allows the payee to send a check to NOAA's Accounting Office, who processes EDA's accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office – Accounting Operations Division
Attn: EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks in encrypted file to the Federal Reserve Bank, and the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If you are remitting funds to EDA via check, please make note of the following:

Notice to Customers Making Payment by Check

If a check is sent to EDA, it will be converted into an electronic funds transfer by copying the check and using the account information to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours and will appear on your regular account statement.

EDA will not return your original check; the original will be destroyed and a copy will be maintained in our office. If the Electronic Funds Transfer (EFT) cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, we will charge you a one-time fee of \$25.00, which will be collected by EFT.

13. CONSTRUCTION COMPLETION: In keeping with prudent grants management policy, EDA construction projects must be completed within five (5) years from the date the Form CD-450 is signed by the Grantee accepting the Award. If construction is not completed by this date and the Grants Officer determines, after consultation with the Grant Grantee, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously, the grant may be terminated. Extensions beyond the five year project period are exceedingly rare and can only be authorized by the Assistant Secretary.

14. USEFUL LIFE: The useful life of this project is hereby determined to be 20 years. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth in provision 7 above.

15. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor regulations set forth in 41 C.F.R. § 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of \$10,000. The Grantee shall comply with these regulations and shall obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4. The goal for the participation of women in each trade area shall be as follows: From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Grantee shall include the "*Standard Federal Equal Employment Opportunity Construction Contract Specifications*" (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

16. PROCUREMENT: The Grantee agrees that all procurement transactions shall be in accordance with Department of Commerce Regulations at 15 C.F.R § 24.36 (State and Local Governments) or 15 C.F.R. § 14.44 (Higher Education, Hospitals, other Non-Profits), as applicable.

17. EVIDENCE OF GOOD TITLE: Prior to the initial disbursement of funds by EDA, the Grantee shall provide opinion of counsel, satisfactory to the Government, that the Grantee has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way, and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. § 314.

18. NONRELOCATION: In signing this award of financial assistance, the Grantee(s) attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one Region to another Region by a primary beneficiary of the Award. (See 13 C.F.R. § 300.3) In the event that EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the award for convenience or cause, and disallowance of any costs attributable, directly or indirectly, to the relocation and the recovery of the Federal share thereof.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the project assisted by EDA. EDA considers an employer to be a “primary beneficiary” if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application to EDA to make the Award. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more jobs permanent jobs so identified.

19. FREEDOM OF INFORMATION ACT COMPLIANCE: EDA is responsible for meeting Freedom of Information Act (FOIA), Title 5 of the United States Code, Section 522 (5 U.S.C. §522) (Public Law 89-554), requirements regarding its records. The regulations governing the U.S. Department of Commerce under 15 C.F.R. part 4 set forth the requirements and procedures that EDA must follow in order to make the requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of applications and other information submitted by applicants may be released in response to a written request for federal records that cites FOIA. Applicants should be aware that EDA may make certain application information publicly available. Accordingly, the applicant should notify EDA if it believes any application information to be confidential.

20. LEAD GRANTEE DESIGNATION AND OBLIGATIONS: This Award is made to multiple Grantees as identified in the Financial Assistance Award Form CD-450 to which these Special Award Conditions are attached. EDA requested that one of the Grantees be designated as the lead grantee to facilitate the administration of this Award. The Grantee named first in the Grantee name block on the CD-450 has agreed in writing to be designated as lead grantee. The co-Grantees acknowledge, agree with and consent to this designation. The Co-Grantees agree that all funds available pursuant to this Award will be disbursed by EDA to the Lead Grantee. The Lead Grantee agrees to be responsible for the further disbursement of all such funds received from EDA to the Co-Grantees in accordance with the Budget attached to this Award. Such disbursement by the Lead Grantee to the Co-Grantees will be made in accordance with all applicable Federal requirements as identified and set forth on the Financial Assistance Award Form CD-450. The Lead Grantee further agrees to be responsible for accumulating all necessary information for and the submission of all reports required to be submitted to EDA pursuant to this Award.

21. SECURITY AGREEMENT/FORM UCC-1/ESTIMATED USEFUL LIFE:

The Grantee agrees to provide EDA with a Security Agreement, satisfactory to EDA, for any and all Equipment that is purchased with funds from this Award for which the unit cost is \$5,000 or greater and to place a lien on such Equipment by filing with the appropriate state/public official in the State of Hawaii, a Form UCC-1 for the Equipment. The Grantee and EDA agree that a) each item of Equipment on the List is identified by Brand Name, b) the List includes the Estimated Useful Life of each item of Equipment, and c) each Estimated Useful Life noted on the List is established and agreed upon.

When the Grantee acquires the Equipment, the Grantee and EDA shall simultaneously enter into a Security Agreement for the Equipment and Grantee shall execute, file, and record a Form UCC-1 for all Equipment. The Form UCC-1 shall be filed in each and every relevant state office and filed of record in each local clerk's office necessary under Hawaii state law to absolutely insure that a Uniform Commercial Code lien is perfected in the Equipment in favor of the Government. The costs of preparing the Security Agreement and Form UCC-1 and for the filing and recording of the Form UCC-1 shall be paid by the Grantee. After filing and recording the Form UCC-1, Grantee's Counsel must deliver to the Government an opinion certifying that no prior lien or Form UCC-1 has been filed on record against the Equipment and that the Form UCC-1 filed and recorded by the Grantee in favor of the Government is a first priority lien.

Grantee shall undertake and be responsible for taking necessary action, at Grantee's expense, to insure that the Form UCC-1s filed and recorded as provided above remain perfected and that such filing and recording do not expire as provided by State law. Grantee shall timely re-file the Form UCC-1s to insure that the liens remain perfected.

Throughout the Estimated Useful Life established in the List, the Grantee agrees to provide adequate and appropriate facilities to house and safeguard the Equipment at the locations described in a "Location of Equipment" attached (Equipment Locations) to the attached to the for aforementioned Grantees' Letter. The Equipment shall not be removed from the Equipment Location to any other venue without EDA's prior written consent, which may be withheld by EDA in the Government's absolute discretion. At all times during the Estimated Useful Life, the Grantee agrees to and will comply with all provisions and requirements of 15 C.F.R. § 314.4 and/or, at EDA's discretion, a default in this Award, the Government shall be entitled to exercise and pursue all available remedies at law or in equity.

The Grantee also agrees that, subject to EDA's approval, the trade-in or selling of the personal property originally acquired for the project in order to acquire replacement personal property of equal or greater value to be used for the project is subject to the same requirements as the original property.

- 22. BUILDING PERMIT:** Prior to EDA's approval of bid documents for construction, the Grantee shall provide documentation satisfactory to EDA that a building permit has been obtained or that the bid documents include language requiring the contractor to obtain the permit prior to the start of construction. If the contractor obtains the permit, then prior to initial disbursement of any construction costs, the Grantee shall provide EDA with satisfactory documentation that the permit has been obtained.

23. RECIPIENT'S LEASE OF GRANT ACQUIRED OR IMPROVED REAL PROPERTY:

Each lease agreement for building, a portion of a building or any improvement(s) on real property funded by this Award shall be subject to the prior written approval of the Economic Development Administration (EDA). Prior to EDA granting said approval, it must be satisfied, inter alia, that the terms and conditions of the lease are consistent with the authorized general and special purpose of the Award; that relationship with the prospective tenant will provide adequate employment and economic benefits for the area in which the property is located; that said lease agreement is consistent with EDA policies concerning, but not limited to, non-discrimination, and that the proposed Lessee is providing adequate compensation to the Lessor for said lease. Adequate compensation is typically determined by the reasonable fair commercial rental value in the community which the project is located. Typically, EDA relies on written verification of this rental value from a local real estate broker (when applicable).

24. RECORDED MORTGAGE OR COVENANT OF FEDERAL SHARE: To better memorialize and protect the Federal Share in real property acquired or improved, in whole or in part, with the funds made available under this Award, the Recipient shall and hereby agrees that prior to initial disbursement under the Award it shall execute and cause to be recorded as [a first priority unsubordinated mortgage lien in favor of EDA / covenant declaring]. EDA's interest in said real property. EDA shall advise whether the Mortgage or Covenant will be used. The Mortgage or Covenant will be duly recorded with the appropriate office where mortgages are recorded for the jurisdiction where the real property is situated. The Mortgage or Covenant shall be in a form and substance satisfactory to EDA. Upon request by EDA Recipient shall furnish an opinion by counsel for the Recipient that the Mortgage or Covenant is a valid and enforceable agreement according to its terms, and has been duly recorded in the appropriate office where mortgages are recorded for that applicable jurisdiction. EDA may waive this requirement in writing where, in the sole judgment of EDA, the EDA investment forms only a small part of a larger project.

The Recipient further agrees that:

- (a) Except as provided in 13 C.F.R. 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Government must be compensated by the Recipient for the Federal share of the value of the property; provided that for equipment and supplies, the standards of the Uniform Administrative Requirements for Grants at 15 C.F.R. Parts 14 and 24 or any supplements or successors thereto, as applicable, shall apply.
- (b) If property is disposed of or encumbered without EDA approval EDA may assert its interest in the property to recover the Federal share of the value of the property for the Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal share, plus costs and interest.
- (c) the Federal share of the value of the property is that percentage of the current fair market value of the property attributed to the EDA participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, incurred to put the property into condition for sale). The Federal share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

- (d) The lien, covenant or other statement of EDA's interest must remain in effect throughout the useful life of the Project which is determined to be 20 years.

Where the Recipient's interest in property is a leasehold for a term of years less than the depreciable remaining life of the property, that factor will be considered in determining the percentage of the Federal share.

- 26. COMPANION PROJECT:** Prior to initial disbursement of EDA funds, the Grantee will provide evidence satisfactory to the Government that a construction contract has been executed for the construction of approximately 13,500 sq. ft. of the Entrepreneur's Sandbox, inclusive of 4,500 sq. ft. on the first floor and 9,000 sq. ft. on the second floor.
- 27. STATE HISTORIC PRESERVATION OFFICER (SHPO) AND OFFICE OF HAWAIIAN AFFAIRS (OHA):** Prior to the start of any ground disturbing activity, the Recipient shall provide evidence satisfactory to the EDA that the National Historic Preservation Act Section 106 consultations with the SHPO and OHA have been completed to the satisfaction of the EDA.
- 28. STORMWATER PERMIT:** Prior to the start of construction, the Recipient shall provide evidence satisfactory to the EDA that they have obtained a National Pollutant Discharge Elimination Systems (NPDES) General Permit for Stormwater Associated with Construction Activity from the Hawaii Department of Health's Clean Water Branch.
- 29. COASTAL ZONE MANAGEMENT ACT:** Prior to the advertisement of construction bid(s), the Recipient shall provide evidence satisfactory to the EDA that a Special Management Area Use Permit has been obtained from the Office of State Planning Coastal Zone Management Program.
- 30. ENDANGERED SPECIES ACT:** Prior to the advertisement of construction bid(s), the Recipient shall provide evidence satisfactory to the EDA that shielded downward facing lighting will be used for all outdoor lighting so as not to interfere with any threatened and/or endangered bird species.
- 31. MARINE MAMMAL PROTECTION ACT (MMPA):** Prior to the advertisement of construction bid(s), the Recipient shall provide evidence satisfactory to the EDA that consultation has been completed with the National Oceanic and Atmospheric Administration (NOAA) on the use of pile driving and rock hammering equipment and all resulting mitigation measures have been implemented and/or included in the project plans and specifications.
- 32. DOCUMENTATION AND ADMINISTRATIVE REQUIREMENTS FOR DISBURSEMENT APPROVAL:** Prior to the disbursement of any of the grant award funds by EDA for reimbursement of costs the follow items must be addressed or submitted:
- A. Joint Grant Management Agreement executed between the High Technology Development Corporation and Hawaii Community Development Authority.

33. PERFORMANCE MEASURES: The Grantee agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Grantees to report actual job creation/retention and private investment leverage three (3), six (6), and nine (9) years after an EDA investment. Grantees are to retain sufficient documentation so that they can submit these required reports. Failure to submit this required report can adversely impact the ability of the Grantee to secure future funding from EDA.

Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA staff will contact Grantees in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted. Grantees should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA in the event of an audits or performance site visits.

**ECONOMIC DEVELOPMENT ADMINISTRATION
CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS
Part One
Certificate of Engineer**

I, the undersigned Engineer, certify that I am familiar with the design of the

_____ *(Name or Type of Facility)*

being constructed by _____ *(Name of Owner)*

as part of EDA Award Number _____ and that all of such facilities will be constructed wholly within the land, leasehold interest and rights-of-way and/or existing public streets and roads described below. I further certify that the land, leasehold interest, and rights-of-way being purchased as hereinafter described are sufficient, but not in excess of actual needs for the Project as planned and approved by the Owner.

1. The Owner holds or will hold fee title or a long-term leasehold interest on the following property. (Aboveground Project elements should be constructed on land to which the Owner possesses fee simple title. Describe each tract, whether presently owned or to be acquired, and indicate what Project element is to be constructed on each (i.e., tank site, pumping station, treatment plant, etc.). If more space is needed please attach additional documentation and label each additional page "Exhibit 1A").

2. The following easements and rights-of-way will be required for this Project. (Describe each easement and/or right-of-way, whether presently owned or to be acquired, by name of current owner and by metes and bounds, including the area in acreage. If more space is needed, please attach additional documentation and label each additional page "Exhibit 1B").

3. The following state, railroad, highway, or other permit(s) will be required. (Describe the location for which any permit will be needed and the name of the permitting entity. If more space is needed, please attach additional documentation and label each additional page "Exhibit 1C").

WITNESS MY HAND, this the _____ day of _____, 20 _____.

Registered Professional Engineer

Address

City

State

Telephone

(This "Certificate of Engineer" is to be completed by the Owner's Architect/Engineer and forwarded to the Owner's Attorney).

**Part Two
Title Opinion**

I, _____, Attorney-at-Law, representing
_____ (hereinafter the "Owner") do hereby certify that:

1. I have examined the public records of _____ County,
State of _____ from the period of _____,
to _____, 20____ (which period of time should be at least 40 years).

Based upon said examination, I find and am of the opinion that _____

_____ is vested with marketable, fee simple title to the land referenced in Part One hereof as being required in fee, subject only to the following liens, encumbrances, and objections. (If additional space is needed, please attach additional documentation and mark each page "Exhibit 2A." If there are no encumbrances on the Owner's fee simple title, please write "None").

Any encumbrances or objections to the fee simple title listed above will not, in my opinion, restrict or interfere with the contemplated construction, use or purpose of the aforesaid EDA Project.

2. This is to further certify that: (i) all long-term leases needed for the Project as described in Part One above have been acquired by the Owner; and (ii) all easements or rights-of-way needed for the Project as described in Part One above have been entered into by the Owner. In addition, I have examined the instruments creating the long-term leases, easements, and/or rights-of-way described in Part One; and it is my opinion that said instruments are valid as to form and substance for the purposes intended and provide the Owner with sufficient interest to construct and maintain the Project facilities.

I certify that I have examined the public records to ascertain that said easements and/or rights-of-way have been obtained from the record owner(s).

3. The extent of said title examination and/or public record search is sufficient for the purpose of establishing the validity of the title to said property and for the purpose of determining outstanding restrictions, liens, encumbrances, and ownership interests pertaining thereto.

4. All permits required for the Project as described in Part One above have been obtained. I have examined all of said permits and am of the further opinion that said permits are valid as to form and substance for the purposes intended.

5. Remarks and Explanations. (If additional space is needed, please attach additional documentation and mark each page "Exhibit 2B").

WITNESS MY HAND, this the _____ day of _____, 20 _____.

Attorney

Address

City

State

Telephone

◆ It is the sole responsibility of the Recipient of the EDA Award to provide a legal opinion verifying that the Recipient has good title to all property required for completion of the Project as defined by the grant award.

◆ A long term leasehold interest is acceptable only if held by the Recipient of the EDA Award for a period not less than the estimated useful life of the Project and only if lease provisions adequately safeguard EDA's interest in the Project.

◆ Only legal descriptions of the property described herein should be attached to this form.

◆ If this title opinion is based on a title insurance policy, any exceptions listed on the policy should be explained and resolved in #5 above.

◆ EDA relies on this title opinion and does not make independent findings regarding title to the property described herein.

**Part Three
Owner's Certification Regarding Eminent Domain**

I, the undersigned _____
(Insert Title)

of the Owner, referenced in Part One above, do hereby certify and confirm that:

1. The Owner will not use any available power of eminent domain (including the commencement of eminent domain proceedings) for the purpose of advancing the economic interests of private parties in connection with any property comprising the Project.

2. To the best of my knowledge and belief, prior to the Effective Date of this Certification, the Owner has not exercised any available power of eminent domain (including the commencement of eminent domain proceedings) for the purpose of advancing the economic interests of private parties in connection with any property comprising the Project.

3. The Owner was or will be required to properly use an available power of eminent domain in connection with the following aspects of the Project. (If more space is needed, please attach additional documentation describing the location and purpose of the Owner's proper use of eminent domain as an attachment and label each additional page "Exhibit 3A". If the use of eminent domain is not anticipated, please mark this section "N/A").

4. If an available power of eminent domain may be used in connection with the Project, the Owner will immediately contact the EDA regional office.

5. I am authorized on behalf of the Applicant to make this Certification which is binding on the Applicant.

WITNESS MY HAND, this the _____ day of _____, 20 _____.

Name

Address

_____ State

Telephone

Revised (12/06)

COVENANT OF PURPOSE, USE AND OWNERSHIP

THIS COVENANT OF PURPOSE, USE AND OWNERSHIP dated this _____ day of _____, 20____, by and between Hawaii
Community Development Authority

whose address is 547 Queen Street, Honolulu, Hawaii 96814

(hereinafter with its successors and assigns called "Recipient"); and the ECONOMIC DEVELOPMENT ADMINISTRATION, UNITED STATES OF AMERICA, whose address is Main Commerce Building, Washington, D.C. 20230 (hereinafter with its successors and assigns called "EDA"):

RECITALS:

WHEREAS, Recipient submitted an application, designated as EDA Project No. 07 01 07127, for financial assistance pursuant to the Public Works and Economic Development Act of 1965 (Pub. L. 108-373, 42 U.S.C. 3121, et seq.), (hereinafter the "Act"); and

WHEREAS, by offer of Award, dated 09/19/2014, EDA offered to Recipient a financial assistance award in the amount of \$ \$3,000,000 (hereinafter called "Award Amount") to assist in financing Entrepreneur's Sandbox (hereinafter called "Project"); and

WHEREAS, said Project included acquisition of and/or specifically improving the real property described in Exhibit "A" attached hereto and incorporated herein (hereinafter with all improvements thereon called "Property"); and

WHEREAS, on 10/14/14, Recipient accepted the Offer of Award (hereinafter called "Award Agreement") subject to certain terms and conditions, pursuant to which Recipient covenanted and agreed to comply with the applicable requirements of 13 Code of Federal Regulations, Part 314; and

WHEREAS, the Award Agreement provides the purposes for which the Award Amount may be used and provides, inter alia, that Recipient will not sell, lease, mortgage, or otherwise alienate any right to or interest in the Property, or use the Property for purposes other than, and different from, those purposes set forth in the Award Agreement and the application made by Recipient therefore (hereinafter called "Project Purposes"), such alienation and use being prohibited by 13 CFR Part 314 and 15 CFR Part 24, and 15 CFR Part 14; and

WHEREAS, under the authority of the Act, EDA is not authorized to permit Recipient to use the Property for purposes other than the Project Purposes or to lease, transfer, convey, mortgage or hypothecate the Project to any party without prior approval from EDA, unless EDA is repaid its share of the market value of the Project, as set forth below;

WHEREAS, Recipient, as owner of all or part of the real property described in Exhibit "A", attached hereto, agreed to record this Covenant in the appropriate office for the recording of public records affecting real property so as to constitute notice to all persons of any and all restrictions on title to and use of the Project and all or part of the real property described in Exhibit "A" attached hereto; and

WHEREAS, the State of Hawaii Bureau of Conveyances
located at 1151 Punchbowl Street, Honolulu, Hawaii 96813
is the proper office to record this Covenant;

NOW THEREFORE, in consideration of financial assistance rendered and/or to be rendered by EDA and of other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, and to assure that the benefits of the Project will accrue to the public and be used as intended by both EDA and Recipient, Recipient hereby covenants and agrees as follows:

1. The estimated useful life of the Project is 20 years as determined by the EDA.
2. Recipient agrees that for the estimated useful life set forth above, Recipient will not sell, transfer, convey, or mortgage any interest in the real property acquired or improved in whole or in part with the funds made available through this Award, nor shall Recipient use the Property for purposes other than the Project Purposes without the prior written approval of the Assistant Secretary, Economic Development Administration or his/her designee or successor. Such approval may be withheld until such time as Recipient first pays to EDA the amount of the award funds disbursed or, at the option of the EDA, the federal government's fair share of the Property as provided in the Code of Federal Regulations, Title 13, Part 314. The federal government's fair share of the Property shall be the amount computed by multiplying the percentage of the federal participation in the total cost of the grant program to the fair market value of the Property at the time of the unauthorized use or conveyance of the Property.
3. Recipient further covenants that in the event the Property is used for purposes other than the Project Purposes, or is sold, leased, transferred, conveyed or mortgaged without the prior written approval of the Assistant Secretary, Recipient will compensate the federal government in the amount of the grant funds disbursed or at the option of the federal government, the federal

government's fair share of the Property as described above.

4. Pursuant to 13 CFR 314, Recipient further agrees that, as a prerequisite to accepting the disbursement of any award funds by EDA, Recipient shall execute and place on record against the property acquired or improved in whole or in part with the funds made available through this Award, this Covenant of Purpose, Use and Ownership. Recipient further agrees that whenever the Property is sold, leased or otherwise conveyed pursuant to the Code of Federal Regulations, Title 13, Part 314, Recipient or the transferor shall add to the document conveying such interest a Covenant of Purpose, Use and Ownership. EDA will in its sole discretion determine whether the Covenant is satisfactory. EDA may require an opinion of counsel for Recipient that the Covenant is valid and enforceable according to its terms and has been properly recorded.

5. It is stipulated and agreed that the terms hereof constitute a reasonable restraint on alienation of use, control, and possession of or title to the Property given the federal interest expressed herein.

6. This Covenant shall run with the land.

IN WITNESS WHEREOF, the Recipient has hereunto set their hand as of the day and year first above written by their duly authorized officer. A completed duly recorded copy of this Covenant shall be forwarded to EDA. (The appropriate acknowledgment must be included for recording in Recipient's jurisdiction).

Recipient Hawaii Community Development Authority

By _____
Title Executive Director

APPROVAL AS TO FORM:

By _____

Title Deputy Attorney General
