

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

March 7, 2018

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

HCDA Board Members:

**SUBJECT:** Shall the Authority Authorize the Interim Executive Director to Execute Amendment No. 1 to the Memorandum of Understanding Between Hawaii Technology Development Corporation and Hawaii Community Development Authority for the Entrepreneur's Sandbox Project?

**SUMMARY:**

The Authority is being asked to authorize the Interim Executive Director to execute Amendment No. 1, to the Memorandum of Understanding ("MOU") between Hawaii Technology Development Corporation ("HTDC") and Hawaii Community Development Authority ("HCDA"), pertaining to the Entrepreneurs Sandbox ("Project") and respective roles and responsibilities for the administration of the Project funding.

**AUTHORITIES:**

Hawaii Revised Statutes § 206E-4.

**BACKGROUND:**

The Entrepreneur's Sandbox project is a 13,500 square foot facility which will serve as an extension of the HTDC's tech business incubator which currently operates near the University of Hawaii Manoa campus. This Project will provide the public and young entrepreneurs access to shared resources which HTDC's tech incubator currently does not have capacity for.

- On January 8, 2014, the Authority authorized the Executive Director to enter into a memorandum of agreement with the High Technology Development Corporation for the delegation of funds for the planning and design of HTDC's facility to be located on Kakaako Makai Lot C.
- On May 7, 2014 the Authority authorized the Executive Director to expend up to \$2,725,000.00 in Capital Improvement Projects funds pursuant to memorandum of agreement between the High Technology Development Corporation and the Hawaii Community Development Authority and engage consultants for planning and design of office facility for HTDC to be located on Kakaako Makai Lot C.

- On September 19, 2014, after applying for federal financial assistance, the HTDC and HCDA were issued a U.S. Department of Commerce Economic Development Administration (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 January 6, 2016, the Authority accepted the determination of finding of no significant impact for the Final Environmental Assessment prepared for the Innovation Block at Lot C Master Plan.
- 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.
- On September 6, 2017, the Authority authorized the Executive Director to execute the Economic Development Administration's Site Certificate and the Covenant of Purpose Use and Ownership, as Required Under the EDA Grant.

#### **ANALYSIS:**

Construction of the Project is being funded in part by a \$3.0 million EDA grant which has been awarded to HCDA and HTDC as co-applicants. Additionally, the Hawaii State Legislature appropriated \$3.0 million in CIP funds to HTDC as the expending authority, by Act 124, Session Laws of Hawaii 2016 for the construction of the Entrepreneur's Sandbox.

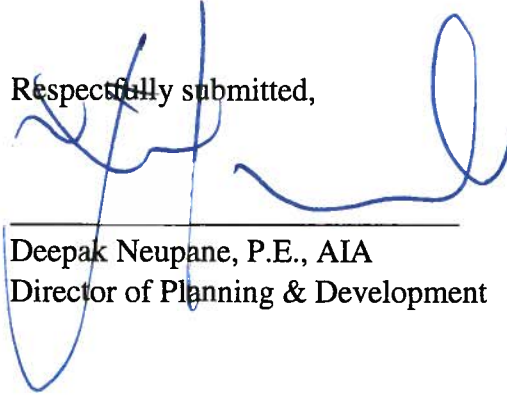
The EDA requested in July 2014, that the co-applicants enter into a joint agreement, outlining the roles and responsibilities of both parties. In October 2014, the Authority provided authorization for HCDA to enter into an MOU with HTDC. Among other things, the MOU memorializes HTDC as the administrator of the EDA grant.

This Amendment No. 1 to the MOU is to establish roles and responsibilities of the HCDA and the HTDC regarding disbursements of the project's funding. The amendment elaborates on HTDC's responsibility to issue payments to the Project developer. The existing MOU is provided as Exhibit A and Amendment No. 1 is provided as Exhibit B.

**RECOMMENDATION:**

Staff recommends the Authority Authorize the Interim Executive Director to execute Amendment No. 1 to the Memorandum of Understanding Between Hawaii Technology Development Corporation and Hawaii Community Development Authority for the Entrepreneur’s Sandbox Project, substantially in the form provided in Exhibit B.


Respectfully submitted,



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

**APPROVED FOR SUBMITTAL:**



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Garrett Kamemoto, Interim Executive Director  
Hawaii Community Development Authority

**Attachments**

- Exhibit A- The existing MOU
- Exhibit B- Amendment No. 1

**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**High Technology Development Corporation**  
**And**  
**Hawaii Community Development Authority**

This Memorandum of Understanding (“MOU”), is effective January 29, 2016 by and between the HIGH TECHNOLOGY DEVELOPMENT CORPORATION (“HTDC”), an agency of the State of Hawaii, whose principal place of business and mailing address is 2800 Woodlawn Drive, Suite 100, Honolulu, Hawaii 96822, and the HAWAII COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business and mailing address is 547 Queen Street, Honolulu, Hawaii 96813 (collectively, the “Parties”).

**WITNESSETH:**

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WHEREAS, the HTDC and the HCDA submitted a grant application for a project entitled the “Entrepreneur’s Sandbox at the Kakaako Collaboration Center” (“Project”) in response to federal opportunity number EDAP2014 solicitation (“Grant”) from the U.S. Economic Development Administration (EDA); and

WHEREAS, the HTDC is the proposed operator of the Project; and

WHEREAS, the proposed site for the Project is that certain real property commonly referred to as “Lot C” in the Kakaako Community Development District, Tax Map Key No. (1) 2-1-015: 052 (“Project site”); and

WHEREAS, the HCDA is the fee owner of the Project site; and

**EXHIBIT A**

WHEREAS, in a letter dated July 23, 2014, the EDA notified the Parties that because the HCDA is the owner of the Project site, a joint agreement between the Parties is required for the Project to receive further consideration; and

NOW, THEREFORE, the Parties hereto mutually agree as follows:

1. HTDC's Responsibilities. The HTDC shall serve as the overall administrator of the Grant and shall be responsible for timely submitting all Grant documents and/or information requested by the EDA. Should the Grant be awarded and accepted by the Parties:

- A. The HTDC shall file EDA project reports;
- B. The HTDC shall receive and distribute Grant funds and file EDA financial reports; and
- C. The HTDC shall be responsible for the operation and maintenance of the "Entrepreneur's Sandbox," the details of which may be memorialized in a future agreement with the HCDA.

2. HCDA's Responsibilities. Should the Grant be awarded and accepted by the Parties, and to the extent permitted by law and subject to the availability of sufficient funds furnished by the HTDC, the HCDA shall be responsible for:

- A. Bidding, awarding, and management of the construction contract(s) for the Project; and
- B. Providing the HTDC the Grant materials required for reporting to the EDA no later than 10 days before reports are due, provided that the HTDC requests the materials from the HCDA with a minimum of 20 days advance notice; provided, however, that any action taken by the HCDA shall be subject to the HTDC timely furnishing all documents and/or

information necessary for HCDA's review and consideration, and may be subject to HCDA Board approval.

3. Should the Grant be awarded and accepted by the HTDC and the HCDA, the Parties mutually agree to adhere to:

A. The requirements set forth in the Public Works Application forms and all applicable exhibits to these forms submitted to the EDA by the HTDC and the HCDA.

B. The Award documents provided by the EDA including:

i. The Financial Assistance Award;

ii. The ED-508 Budget accompanying the Award;

iii. The Special Award Conditions;

iv. The Standard Terms and Conditions (Construction Projects) for

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Public Works and Development Facilities and Economic Adjustment Assistance, amended December 13, 2007; and

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v. The EDA publication, Summary of EDA Construction Standard, amended December 3, 2010.

C. The provisions of the United States Statutes codified in the United States Code and EDA regulations, codified in the Code of Federal Regulations (CFR), any Federal Register announcements, and OMB Circulars applicable to EDA Public Works projects, either specifically cited to or provided by the EDA in the Grant application or award.

4. Term. This MOU shall be effective as of the date listed above and shall continue until the Parties mutually determine that the objectives of this MOU have been fulfilled, unless sooner terminated by mutual agreement.

5. 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 to the addresses listed above. 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.

6. Severability. If any provision of this MOU shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this MOU is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

7. Waiver of Contractual Right. The failure of either Party to enforce, or the granting of a waiver of, any provision of this MOU shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this MOU.

8. Amendment. This MOU may be modified only by mutual written agreement signed by both Parties.

9. Entire Agreement. This MOU contains the entire agreement of the Parties and there are no other promises or conditions in any other agreement whether oral or written relative to the Grant. This MOU supersedes any prior written or oral agreements, conditions, understandings, promises, warranties or representations whether express or implied between the Parties.

10. Applicable Law. This MOU shall be governed by the laws of the State of Hawaii.

11. Counterparts. This MOU may be executed in several duplicate counterparts and such counterparts, when executed, shall constitute a single agreement.

IN WITNESS WHEREOF, the HTDC and the HCDA have caused this MOU to be executed by their signatures, on the dates below.

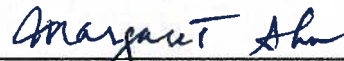
HIGH TECHNOLOGY DEVELOPMENT  
CORPORATION

By: 

Print Name: Roberta L. K. Melton  
Title: Executive Director and CEO

Date: January 26, 2016


APPROVED AS TO FORM:



MARGARET AHN  
Deputy Attorney General for HTDC

Date: January 26, 2016

HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY

By: 

Print Name: Aedward Los Banos  
Title: Interim Executive Director

Date: January 29, 2016

APPROVED AS TO FORM:



MICHAEL G. K. WONG  
Deputy Attorney General for HCDA

Date: January 29, 2016



**Amendment No. 1**  
**to**  
**MEMORANDUM OF UNDERSTANDING**  
**Between**  
**Hawaii Technology Development Corporation**  
**And**  
**Hawaii Community Development Authority**

This "Memorandum of Understanding ("MOU"), Amendment No. 1 is entered into on \_\_\_\_\_ by and between the HAWAII TECHNOLOGY DEVELOPMENT CORPORATION ("HTDC"), formerly known as the HIGH TECHNOLOGY DEVELOPMENT CORPORATION, an agency of the State of Hawaii, whose principal place of business and mailing address is 2800 Woodlawn Drive, Suite 100, Honolulu, Hawaii 96822, and the HAWAII COMMUNITY DEVELOPMENT AUTHORITY ("HCDA"), a body corporate and a public instrumentality of the State of Hawaii, whose principal place of business and mailing address is 547 Queen Street, Honolulu, Hawaii 96813 (collectively, the "Parties").

WITNESSETH:

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WHEREAS, the HTDC and the HCDA submitted a grant application for a project entitled the "Entrepreneur's Sandbox at the Kakaako Collaboration Center" ("Project") in response to federal opportunity number EDAP2014 solicitation ("Grant") from the U.S. Economic Development Administration (EDA);

WHEREAS, the HTDC is the proposed operator of the Project;

WHEREAS, the HCDA is the fee owner of the Project site;

WHEREAS, the proposed site for the Project is that certain real property commonly referred to as "Lot C" in the Kakaako Community Development District, Tax Map Key No. (1) 2-1-015: 052 ("Project site");

WHEREAS, in a letter dated July 23, 2014, the EDA notified the Parties that because the HCDA is the owner of the Project site, a joint agreement between the Parties was required for the Project to receive further consideration;

WHEREAS, on January 29, 2016, the Parties entered into a Memorandum of Understanding ("MOU") to serve as a joint agreement between the Parties to identify the responsibilities of each Party, to receive further consideration by the EDA for the Grant;

WHEREAS, the EDA awarded \$3,000,000 to the Parties for the project through award number 07-01-07127;

WHEREAS, the Legislature of the State of Hawaii appropriated \$3,000,000.00 to HTDC, as the expending authority, by Act 124, Session Laws of Hawaii 2016 for the construction of the Entrepreneurs Sandbox, identified as TE0014, Appropriation Symbols B-16-404, 405, 406;

WHEREAS, HCDA issued a Request For Proposals ("RFP") on December 7, 2015 for the development of the innovation block at the "Lot C" site including construction of the Project;

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WHEREAS, the Parties wish to amend the original MOU, dated January 29, 2016, to document details as to the arrangement of payment, Grant term, and responsibilities of the Parties.

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NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereby agree as follows:

1. Paragraph 1 is hereby amended by deleting the phrase in brackets and adding the underlined phrase to read as follows:
  1. HTDC' s Responsibilities. The HTDC shall serve as the overall administrator of the Grant and shall be responsible for timely submitting all Grant documents and/or information requested by the EDA. [Should the Grant be awarded and accepted by the Parties:]

- A. The HTDC shall file EDA project reports;
- B. The HTDC shall receive and distribute Grant funds and file EDA financial reports; and
- C. The HTDC shall be responsible for the operation and maintenance of the "Entrepreneur's Sandbox," the details of which may be memorialized in a future agreement with the HCDA.
- D. The HTDC shall make direct payments to the vendor selected through HCDA's procurement process and as cited in Section 2(A) for the proposed Project.

2. Paragraph 2 is hereby amended by deleting the phrase in brackets and adding the underlined phrase to read as follows:

2. HCDA's Responsibilities. [Should the Grant be awarded and accepted by the Parties, and to] To the extent permitted by law and subject to the availability of sufficient funds furnished by the HTDC, the HCDA shall be responsible for:

- A. Bidding, awarding, and management of the construction contract(s) for the Project; and
- B. Providing the HTDC the Grant materials required for reporting to the EDA no later than 10 days before reports are due, provided that the HTDC requests the materials from the HCDA with a minimum of 20 days advance notice; provided, however, that any action taken by the HDCA shall be subject to the HTDC timely furnishing all documents and/or information necessary for HCDA's review and consideration, and may be subject to HCDA Board approval.

3. Paragraph 3 is hereby amended by deleting the phrase in brackets and adding the underlined phrase to read as follows:

3. [Should the Grant be awarded and accepted by the HTDC and the HCDA, the]

The Parties mutually agree to adhere to:

- A. The requirements set forth in the Public Works Application forms and all applicable exhibits to these forms submitted to the EDA by the HTDC and the HCDA.
- B. The Award documents provided by the EDA including:
  - i. The Financial Assistance Award;
  - ii. The ED-508 Budget accompanying the Award
  - iii. The Special Award Conditions;
  - iv. The Standard Terms and Conditions (Construction Projects) for Public Works and Development Facilities and Economic Adjustment Assistance, amended December 13, 2007; and
  - v. The EDA publication, Summary of EDA Construction Standard amended December 3, 2010.
- C. The provisions of the United States Statutes codified in the United States Code and EDA regulations, codified in the Code of Federal Regulations (CFR), any Federal Register announcements, and OMB Circulars applicable to EDA Public Works projects, either specifically cited to or provided by the EDA in the Grant application or award.

- 4. Term. This MOU shall be effective as of the date listed above and shall continue until the Parties mutually determine that the objectives of this MOU have been fulfilled, unless sooner terminated by mutual agreement. The Grant award shall expire on September 19, 2019.
- 5. All other provisions of the MOU, dated January 29, 2016, shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to MOU to be effective on the effective date specified above.

**HAWAII TECHNOLOGY DEVELOPMENT  
CORPORATION**

By: \_\_\_\_\_

Roberta LK Melton  
Executive Director and CEO

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

DAWN T. APUNA  
Deputy Attorney General for HTDC

Date: \_\_\_\_\_

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**HAWAII COMMUNITY DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_

NAME:

TITLE:

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_

Deputy Attorney General for HCDA

Date: \_\_\_\_\_