

STATE OF HAWAII
HAWAII COMMUNITY DEVELOPMENT AUTHORITY
Regular General Meeting
Honolulu, Hawaii 96813

December 4, 2019

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

HCDA Board Members:

SUBJECT: Shall the Authority Authorize the Hawaii Community Development Authority Executive Director to Execute a Memorandum of Agreement with the Stadium Authority, Department of Accounting and General Services and Appropriate State Agencies, Notwithstanding HRS Section 206E-3 and Pursuant to Act 268 (19) for Matters Affecting the Stadium Development District?

SUMMARY:

On July 8, 2019, Act 268 was signed into law, establishing the Stadium Development District, which includes all state property under the jurisdiction of the Stadium Authority. This bill directs the HCDA to facilitate the development of all State property within the District. It requires a Memorandum of Agreement for matters affecting the District be executed by the HCDA Executive Director, the State Comptroller, and the Stadium Authority.

AUTHORITIES:

Pursuant to Act 268 (2019) Relating to the Structure of Government - Establishing the Stadium Development District (Exhibit A). Specifically, in Act 268 the legislature mandated that:

Notwithstanding section 206E-3, for matters affecting the stadium development district, the executive director of the authority, state comptroller and the stadium authority shall execute a memorandum of agreement with appropriate state agencies.

Based on the language of the statute, the execution of the MOA is not discretionary, but a required action of the HCDA and the other named parties.

BACKGROUND:

With the passage of Act 268 the Stadium Development District was established under the HCDA to make optimal use of public land for the economic, residential, educational, and social benefit of the people of Hawaii. The District consists of 98.5 acres in Halawa, Oahu, Hawaii.

The Legislature found:

The stadium facility has been in dire need of significant repair and maintenance for many years. The stadium authority has considered repairing, upgrading, and replacing the existing facility to optimize the public's enjoyment and ensure public safety. Redeveloping, renovating, or improving these public lands in a manner that will provide suitable recreational, residential, educational, and commercial areas, where the public can live, congregate, recreate, attend schools, and shop, as part of a thoughtfully integrated experience, is in the best interest of the state and its people.

To address the matter, the Legislature further found:

The authority (HCDA) shall facilitate the development of all property belonging to the State within the district;

Per Act 268, in addition to any other duties that the Authority may have pursuant to this chapter, (HRS 206E), the Authority's duties shall include:

- (1) Coordinating with federal government*
- (2) Coordinating with state entities*
- (3) Developing the infrastructure*
- (4) Providing, to the extent feasible, maximum opportunity for the reuse of property belonging to the State within the district by private enterprise or state and county government.*

Relative to the New Aloha Stadium Entertainment District (NASED) project the HCDA will be inserted in the midst of an ongoing process that was initiated in 2014.

In 2014, the State Department of Accounting and General Services (DAGS) engaged consultants for an update of the status of the structural health of the Stadium. They concluded that the Stadium needed approximately \$300 million in deferred maintenance, and that the cost of repairs would grow at a rate of about seven percent per year if not addressed.

If the state were to fund approximately \$20 million per year for repairs, it would cost over \$420 million and take over 20 years to complete what is necessary.

In 2014, the estimated cost of a 30,000-40,000 seat stadium approximated \$300 million (subsequently updated to \$350 million in 2019) which resulted in a decision to pursue a new facility.

Market feedback in 2014 solicited through both informal and formal means indicated that:

- A smaller stadium and "sold out" appearance will attract more events enhancing overall performance;

- By realizing upgrades, including amenities standard at newer facilities, will increase operational efficiencies and enhance stadium return on a per event basis;
- Request for Interest is indicative that the stadium can be self-sustaining after adopting the aforementioned improvements along with ancillary development in the surrounding 98-acres; and
- RFI also confirmed interest from the industry and private sector to do the project, however prioritization of the stadium in the project would require a capital infusion from the State.

Act 49, of the 2017 Legislative Session provided \$10 million for the new stadium planning, of which \$9.9 has been encumbered for the master plan, Environmental Impact Statement (EIS), and related studies for development and construction of a new stadium facility and mixed-use development of the district; including the procurement of phase one. A contract with Crawford Architects was executed in December 2018 by DAGS for the aforementioned pre-development due diligence through to the solicitation process.

To date, the consultant has completed a site selection analysis and procurement strategy. The consultant is otherwise currently in the process of preparing a master plan, EIS, and procurement documents including the supplemental documents and studies necessary to support these activities. Separately DAGS through the Office of the Attorney General has also retained special counsel, O'Melveny, to provide supplemental project oversight including due diligence, legal review and other services.

ANALYSIS:

A Memorandum of Agreement (MOA), simply describes the cooperative relationship between parties that want to work together to achieve a goal. Based on the language of Act 268 this MOA is required under statute and the execution of the document is not discretionary. The extent the MOA is discretionary is relative to implementation and transition of the project within the explicit parameters identified in the legislation.

In speaking with law makers, the intent of the mandated MOA would allow the HCDA, DAGS and the Stadium Authority to collaborate on the best means to work together to implement the development of a new stadium and ancillary uses in the surrounding area. In crafting the legislation, law makers sought to:

- Develop underutilized property surrounding the stadium area with the primary goal of sustaining and enhancing future stadium operations;
- Utilize the powers already vested with the HCDA as the State's redevelopment agency to realize responsible redevelopment;
- Recognize and honor the role that the Stadium Authority and DAGS have had in the history and future of the district and seeks to optimize their strengths; and
- Seed the project with the intention that the \$350 million allocated will be wisely utilized as the final allocation of public funds towards Stadium maintenance and operations in anticipation that it will be self-sustaining in the future.

The Stadium Authority is the land owner, per Act 268, and all state lands in the district will be transferred to the Stadium Authority. In the MOA, it will be clarified that the Stadium Authority will continue to manage and operate the properties and improvements. The HCDA is otherwise tasked with the facilitation of development of the district and will be joining the ongoing development efforts previously initiated by DAGS and the Stadium Authority.

Relative to the transition of the NASED project relative to planning and development, since Act 268 was signed into the law, the HCDA has been working with DAGS and the Stadium Authority to get up to speed. One of the most critical elements in this process is the need to move expeditiously and efficiently to realize a new facility. The Stadium's maintenance contractor has identified \$16.5 million to \$20 million in necessary repairs to keep the Stadium in operation for the 4-5 years it is estimated to get the Stadium procured, designed, constructed and placed in service. This is one of the key drivers in the process to optimize the use of public resources.

Based on the need to move efficiently and effectively, what was generally agreed upon in the group was that DAGS continue to conduct the pre-development due diligence including the master plan and EIS through the request for qualifications stage of the solicitation, with the HCDA taking over the project at the RFP stage. With DAGS initiating the solicitation it was also found appropriate that DAGS Comptroller serve as the Head of Procurement Agency (HOPA) on the NASED solicitation.

HCDA shall facilitate the development of all property within the district. It will coordinate with government entities, develop infrastructure necessary to support the development of state property within the District, and provide opportunity for reuse of state property within the District by private enterprise or state and county government.

In terms of governance of the project, decision-making rests with the HCDA under Act 268. Currently, the Stadium Authority lacks redevelopment powers and therefore is unable to make such decisions. Under the terms of the MOA Stadium Authority feedback would be collected and provided to the HCDA board with regard to decisions affecting the Stadium development district.


While execution of the MOA is not discretionary, the draft MOA included as Exhibit B as currently negotiated, effectively addresses the requirements of Act 268. The actual implementation of Act 268 and the MOA will however require additional HCDA resources to administer. To implement Act 268, staff anticipates that it may need as many as four additional positions as follows:

1. Senior project manager – to oversee and direct work relative to the immense scope and complex nature of this project, retaining an experienced individual will be essential.
2. Senior staff planner – to support project management efforts.
3. Accountant – to analyze and appropriately account for what will be complex transactions and comply with the various funding source requirements.
4. Clerical support – to process and support the high volume of studies and reports that will be associated with the project.

RECOMMENDATION:

Authorize the Executive Director to execute a Memorandum of Agreement with the state comptroller and the stadium authority, notwithstanding section 206E-3, for matters affecting the stadium development district, as mandated by the Hawaii State Legislature via Act 268.

Respectfully submitted,


Aedward Los Banos, Executive Director

Attachments
Exhibit A: Act 268
Exhibit B: Draft MOA



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 8, 2019

GOV. MSG. NO. 1370

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 8, 2019, the following bill was signed into law:

HB1586 HD1 SD2 CD1

RELATING TO THE STRUCTURE OF
GOVERNMENT.
ACT 268 (19)

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

A BILL FOR AN ACT

RELATING TO THE STRUCTURE OF GOVERNMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 206E, Hawaii Revised Statutes, is
2 amended by adding a new part to be appropriately designated and
3 to read as follows:

4 "PART . **STADIUM DEVELOPMENT DISTRICT**

5 **§206E- Stadium development district; purpose; findings.**

6 The legislature finds that the aloha stadium and lands under the
7 jurisdiction of the stadium authority and department of
8 accounting and general services are underutilized. The stadium
9 facility has been in dire need of significant repair and
10 maintenance for many years. The stadium authority has
11 considered repairing, upgrading, and replacing the existing
12 facility to optimize the public's enjoyment and ensure public
13 safety. Redeveloping, renovating, or improving these public
14 lands in a manner that will provide suitable recreational,
15 residential, educational, and commercial areas, where the public
16 can live, congregate, recreate, attend schools, and shop, as



1 part of a thoughtfully integrated experience, is in the best
2 interests of the State and its people.

3 This part establishes the stadium development district to
4 make optimal use of public land for the economic, residential,
5 educational, and social benefit of the people of Hawaii.

6 The legislature finds that the jurisdiction of the
7 authority shall include development within the stadium
8 development district. Any development within the district shall
9 require a permit from the authority.

10 **§206E- Definitions.** As used in this part, unless the
11 context otherwise requires:

12 "District" means the stadium development district
13 established by this part.

14 **§206E- District; established; boundaries.** (a) The
15 stadium development district is established and shall be
16 composed of all land under the jurisdiction of the stadium
17 authority established pursuant to section 109-1.

18 (b) The authority shall facilitate the development of all
19 property belonging to the State within the district; provided
20 that development is carried out in accordance with any county
21 transit-oriented development plans for lands surrounding the



1 district. In addition to any other duties that the authority
2 may have pursuant to this chapter, the authority's duties shall
3 include:

- 4 (1) Coordinating with the federal government regarding the
5 ownership and use of, or restrictions on, properties
6 within the district that were previously owned or are
7 currently owned by the federal government;
- 8 (2) Coordinating with other state entities during the
9 conveyance of properties and conducting remediation
10 activities for the property belonging to the State
11 within the district;
- 12 (3) Developing the infrastructure necessary to support the
13 development of all property belonging to the State
14 within the district; and
- 15 (4) Providing, to the extent feasible, maximum opportunity
16 for the reuse of property belonging to the State
17 within the district by private enterprise or state and
18 county government.

19 **§206E- Development guidance policies.** The following
20 shall be the development guidance policies generally governing
21 the authority's actions in the district:



- 1 (1) Development shall be in accordance with any county
2 transit-oriented development plan, unless modified by
3 the authority pursuant to paragraph (2);
- 4 (2) With the approval of the governor, the authority, upon
5 the concurrence of a majority of its voting members,
6 may modify and make changes to a transit-oriented
7 development plan with respect to the district to
8 respond to changing conditions; provided that before
9 amending a transit-oriented development plan, the
10 authority shall conduct a public hearing to inform the
11 public of the proposed changes and receive public
12 input;
- 13 (3) The authority shall seek to promote economic
14 development and employment opportunities by fostering
15 diverse land uses and encouraging private sector
16 investments that use the opportunities presented by
17 the high-capacity transit corridor project consistent
18 with the needs of the public, including mixed use
19 housing and housing in transit-oriented developments;
- 20 (4) The authority may engage in planning, design, and
21 construction activities within and outside the



1 district; provided that activities outside the
2 district shall relate to infrastructure development,
3 area-wide drainage improvements, roadway realignments
4 and improvements, business and industrial relocation,
5 and other activities the authority deems necessary to
6 carry out development of the district and implement
7 this part. The authority may undertake studies or
8 coordinating activities in conjunction with the county
9 and appropriate state agencies and may address
10 facility systems, industrial relocation, and other
11 activities;

12 (5) Hawaiian archaeological, historic, and cultural sites
13 shall be preserved and protected;

14 (6) Endangered species of flora and fauna shall be
15 preserved to the extent feasible;

16 (7) Land use and development activities within the
17 district shall be coordinated with and, to the extent
18 possible, complement existing county and state
19 policies, plans, and programs affecting the district;
20 and



1 (8) Public facilities within the district shall be
2 planned, located, and developed to support the
3 development policies established by this chapter for
4 the district and rules adopted pursuant to this
5 chapter.

6 **§206E- Stadium development district governance;**
7 **memorandum of agreement.** Notwithstanding section 206E-3, for
8 matters affecting the stadium development district, the
9 executive director of the authority, state comptroller, and the
10 stadium authority shall execute a memorandum of agreement with
11 the appropriate state agencies.

12 **§206E- Annual comprehensive report.** Not less than
13 twenty days prior to the convening of each regular session of
14 the legislature, the authority shall submit to the legislature
15 an annual comprehensive status report on the progress of
16 development within the stadium development district."

17 SECTION 2. Section 206E-14, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The authority may, without recourse to public
20 auction, sell, or lease for a term not exceeding sixty-five
21 years, all or any portion of the real or personal property



1 constituting a redevelopment project to any person, upon such
2 terms and conditions as may be approved by the authority, if the
3 authority finds that the sale or lease is in conformity with the
4 community development plan.

5 For the stadium development district, leases shall not
6 exceed a term of ninety-nine years."

7 SECTION 3. (a) Notwithstanding any other law to the
8 contrary, the department of land and natural resources shall
9 transfer the fee simple interest in all parcels of land under
10 the control or jurisdiction of the stadium authority, including
11 all existing improvements thereon, to the stadium authority as
12 grantee, as is, where is; provided that the legal instrument
13 transferring the fee simple interest shall prohibit the stadium
14 authority from selling, exchanging, or otherwise relinquishing
15 the State's title to any ceded lands. The parcels to be
16 transferred shall include:

- 17 (1) TMK 99003055:0000;
18 (2) TMK 99003061:0000;
19 (3) TMK 99003070:0000;
20 (4) TMK 99003071:0000; and



1 (5) Any other parcels under the jurisdiction of the
2 stadium authority.

3 (b) The department of land and natural resources shall
4 prepare, execute, and record, in the land court or bureau of
5 conveyances, as appropriate, a quitclaim deed to convey each
6 above-listed parcel with all existing improvements, subject to
7 the property boundaries determined pursuant to subsection (a),
8 to the stadium authority, as grantee. As these are conveyances
9 in which the State and its agencies are the only parties, the
10 tax imposed by section 247-1, Hawaii Revised Statutes, shall not
11 apply. Effective on the date of transfer, every reference to
12 the present titleholder or the head of the department or agency
13 in each instrument, if the titleholder is a department or an
14 agency, shall be construed as a reference to the stadium
15 authority.

16 SECTION 4. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$20,000,000 or so
18 much thereof as may be necessary for fiscal year 2019-2020 for
19 the establishment and development of the stadium development
20 district for public use.



1 The sum appropriated shall be expended by the Hawaii
2 community development authority for the purposes of this Act;
3 provided that the appropriation shall not lapse at the end of
4 the fiscal year for which the appropriation is made; provided
5 further that all moneys unencumbered as of June 30, 2022, shall
6 lapse as of that date.

7 SECTION 5. The legislature finds and declares that the
8 issuance of revenue bonds under this Act is in the public
9 interest and for the public health, safety, and general welfare.
10 Pursuant to part III, chapter 39, Hawaii Revised Statutes.
11 Accordingly, the Hawaii community development authority, with
12 the approval of the governor, may issue in one or more series
13 revenue bonds in a total amount not to exceed \$180,000,000 for
14 the Hawaii community development authority to implement the
15 stadium development district as provided for in part ,
16 chapter 206E, Hawaii Revised Statutes.

17 The proceeds of the revenue bonds shall be deposited into
18 the Hawaii community development revolving fund created in
19 section 206E-16, Hawaii Revised Statutes.

20 The revenue bonds authorized under this Act shall be issued
21 pursuant to part III, chapter 39, Hawaii Revised Statutes. The



1 authorization to issue revenue bonds under this Act shall lapse
2 on June 30, 2024.

3 SECTION 6. The director of finance is authorized to issue
4 general obligation bonds in the sum of \$150,000,000 or so much
5 thereof as may be necessary and the same sum or so much thereof
6 as may be necessary is appropriated for fiscal year 2019-2020 to
7 the Hawaii community development authority for the stadium
8 development district.

9 SECTION 7. The appropriation made for the capital
10 improvement project authorized by section 6 of this Act shall
11 not lapse at the end of the fiscal biennium for which the
12 appropriation is made; provided that all moneys from the
13 appropriation unencumbered as of June 30, 2022, shall lapse as
14 of that date.

15 SECTION 8. This Act shall take effect on July 1, 2019.

APPROVED this 08 day of JUL , 2019



GOVERNOR OF THE STATE OF HAWAII



HB No. 1586, HD 1, SD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives



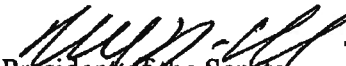
Brian L. Takeshita
Chief Clerk
House of Representatives

H.B. No. 1586, H.D. 1, S.D. 2, C.D. 1

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate


Clerk of the Senate

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“Agreement”), effective the ___ day of _____ 2019, is entered into between the **Department of Accounting and General Services** (hereinafter “DAGS”), a governmental agency of the State of Hawaii, whose address is Kalanimoku Building, 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the **Aloha Stadium Authority** (hereinafter “Stadium Authority”) an _____ State of Hawaii, whose address is _____, and the **Hawaii Community Development Authority** (hereinafter “HCDA”), a body corporate and a public instrumentality of the State of Hawaii whose business address is 547 Queen St., Honolulu, Hawaii 96813, collectively, the “Parties”.

RECITALS

Act 268 of the 2019 regular session of the Hawaii State Legislature (“Act 268”) establishes the Stadium Development District (“District”) comprising all lands under the jurisdiction of the Stadium Authority established pursuant to Section 109-1, to make optimal use of public land for the economic, residential, educational, and social benefit of the people of Hawaii. The District consists of 98.58 acres in Halawa, Oahu, Hawaii (“Site”) and is further described in Exhibit X.

Development of property within the District shall be carried out in accordance with the development guidance policies established in Act 268 that requires the HCDA to facilitate development of the District.

Act 268 appropriates funding to HCDA for the establishment and development of the District for public use, provided that these funds are encumbered before lapsing. The legislation describes funding as follows.

<u>Amount/Source</u>	<u>Lapse Date</u>
\$20M/General Revenues	6/30/22
\$150M/General Obligation Bonds	6/30/22
\$180M/Revenue Bonds	6/30/24

Planning for the District has been initiated by DAGS, working on behalf of the Stadium Authority, an administratively attached agency, to address the significant structural issues of the aging facility. Preliminary findings supported the construction of a new facility as the necessary maintenance and repair estimates approximated the costs of new construction. The findings also indicated that ancillary development in the surrounding area could support the future maintenance costs of the facility.

DAGS has currently engaged a planning consultant, Crawford Architects, who is conducting pre-development due diligence for services which include master planning, conceptual design, environmental impact statement, and other pre-development/solicitation due diligence. The project is known as the New Aloha Stadium Entertainment District (“NASED” or “Project”).

DAGS has also worked with the Stadium Authority and the Office of the Attorney General to retain special counsel, <contractor name> to <insert scope>.

The NASED redevelopment is proposed to include the demolition and construction of a replacement stadium facility at the current Site. The Project will include design and construction of additional related ancillary development to create a vibrant, thriving community entertainment district through new, mixed-use development offering a range of amenities that will serve residents and visitors of the State of Hawaii. Delivery of the Project will be accomplished in phases through a series of public-private partnerships.

The term of this Agreement shall commence on the Effective Date and terminate on the date on which performance of all obligations of the Parties under this Agreement have been completed or upon written concurrence of the Parties that this Agreement is completed.

The Parties enter into this Agreement to set forth the respective responsibilities, terms, and conditions with respect to the development of the District. In consideration of the foregoing, the Parties hereby agree as follows:

ALOHA STADIUM RESPONSIBILITIES

Site Control. The Stadium Authority shall make all necessary arrangements with the State of Hawaii Department of Land and Natural Resources for the transfer in fee simple interest, all parcels of land under the control or jurisdiction of the Stadium Authority, including all existing improvements thereon, in accordance with Act 268. The legal instrument transferring the fee simple interest shall prohibit the Stadium Authority from selling, exchanging, or otherwise relinquishing the state's title to any ceded lands. The parcels to be transferred shall include:

- (1) TMK: 99003055:0000;
- (2) TMK: 99003061:0000;
- (3) TMK: 99003070:0000;
- (4) TMK: 99003071:0000; and
- (5) Any other parcels under the jurisdiction of the Stadium Authority

Land Lease. Inasmuch as Act 268 provides that the Stadium Authority shall hold title to lands in the District, land leases issued for redevelopment of the District shall not exceed a term of ninety-nine (99) years.

Land Restrictions. The Stadium Authority shall coordinate with the federal government and HCDA regarding the ownership and use of, or restrictions on, properties within the district that were previously owned, or are currently owned by the federal government.

Management and Operations. The Stadium Authority shall retain management and operational oversight of the properties and improvements within the district. For new development, the Stadium Authority shall assume the role of the lessor, land owner, or similarly

designated role as provided for in a development lease, or other agreement following the development phase and upon assignment of this interest by the HCDA.

Approvals and Decision-Making. By statute, development decisions arising from the redevelopment of the Site shall be made by the HCDA, however in making its decision, the HCDA shall consider input from the Stadium Authority. To gather input from the Stadium Authority, the HCDA shall provide a report including an analysis and recommendation for Stadium Authority consideration and feedback prior to taking action on the matter. Relative to matters identified as DAGS responsibilities, the existing Memorandum of Understanding dated <insert date or other appropriate reference> between DAGS and the Stadium Authority will be followed.

Records. The Stadium Authority shall make available upon request by the HCDA, its records regarding the NASED project. The Stadium Authority shall also make available relevant records including as-built plans, encumbrances, and other records relevant to the redevelopment of the site.

DAGS RESPONSIBILITIES

Regulatory Approvals and Entitlements. DAGS shall conduct all planning due diligence for NASED including but not limited to compliance with HRS Chapter 343 relating to Environmental Impact Statements, HRS Chapter 6E Historic Preservation, archaeological inventory survey, remediation studies and plans, and addressing zoning or deed restrictions on property within the District.

Coordination with Other Government Entities. DAGS shall assist with other state, city, and federal government entities during the conveyance of property within the District and assist in obtaining approvals as needed.

Planning. DAGS shall be responsible for preparing a masterplan for the District that complies with the City's TOD Plan. In accordance with HRS Chapter 343 DAGS shall prepare an Environmental Impact Statement ("EIS") for the District, reflecting the masterplan buildout. HCDA shall be allowed no less than ten (10) days to review the draft and final EIS prior to it being submitted to the Office of Environmental Quality Control for publication.

Procurement. While the HCDA has been tasked to carry out the NASED solicitation and development, it shall delegate to DAGS and the Comptroller to serve as the Head of Procurement Agency (HOPA) on all NASED solicitations that would be subject to the State Procurement Code. With the exception of the request for qualifications (RFQ) for the initial phase of the project, the remaining documents shall be prepared by the HCDA for DAGS approval as HOPA and publication as the procurement agency. Similarly any disputes or challenges over the procurement will be managed by DAGS. Provided the magnitude of the project the segregation of these duties will serve as a significant control feature.

DAGS is currently working with its consultant on and will issue and complete the RFQ for the initial phase of NASED development through the evaluation of responses. A copy of this documentation shall be provided to the HCDA who will prepare and issue the subsequent Request for Proposals.

Development Schedule. DAGS will prepare a detailed preliminary development schedule in gant chart format of NASED projects from planning through construction. The development schedule shall be updated as appropriate for the mutual benefit of the Parties until it is formally transitioned after the RFQ to the HCDA for maintenance.

Transition of Contracts and Records. In order for the HCDA to continue progress on NASED that was initiated by DAGS, the parties have agreed to transition any open contracts, including any remaining funds, to the HCDA for administration following upon the completion of the RFQ process which will be assumed by the HCDA. Up until the transition event, DAGS shall be responsible for the administration of these contracts in good faith.

DAGS shall make available sooner and upon request by either the HCDA or the Stadium Authority its records regarding the NASED project. DAGS shall also make available relevant records including as-built plans and records relevant to the redevelopment of the site.

HCDA RESPONSIBILITIES

Facilitate Development. HCDA shall facilitate the development of all property within the District, provided that development is carried out in accordance with any county transit-oriented development plans, unless modified by the HCDA's Authority pursuant to the terms provided in Act 268.

In addition the HCDA's duties shall include: coordinating with government entities regarding ownership, use of, and restrictions on properties within the District; coordinate with other government agencies during the conveyance of properties and conducting remediation activities for state property within the District; developing infrastructure necessary to support the development of state property within the District; and where feasible, providing maximum opportunity for reuse of property belonging to the state within the District by private enterprise or state and county government.

The HCDA shall forward to the Stadium Authority for review and approval its recommendations for all decisions necessary to facilitate development arising from an HCDA Responsibility.

Coordinate Development. HCDA shall ensure that land use and development activities within the district shall be coordinated with and, to the extent possible, complement existing county and state policies, plans, and programs affecting the district; and public facilities within the district shall be planned, located, and developed to support the development policies established in the District.

HCDA shall also ensure that land use and development activities within the district shall be coordinated with stadium operations to the extent possible.

Development Procurement. HCDA shall prepare all procurement documentation necessary including but not limited to the Request for Proposals for the subsequent phases of the NASED developer solicitation, proposal review, selection, and contracting, of the developer(s) for the NASED redevelopment, provided that the Stadium Authority shall administratively approve any draft procurement documents prior to solicitation and participate in subsequent review of developer's proposals.

Where procurement is not utilized, and an sanctioned alternative means is used to realize development, the HCDA shall similarly provide the Stadium Authority documentation for its consideration prior to proceeding with any action.

Development Agreements. Negotiations with the selected developer(s) towards a master development agreement for all NASED projects, shall be conducted jointly by HCDA and the Stadium Authority. Execution of the development agreement shall be subject to the approval of the Stadium Authority.

Development Schedule. Upon transition from DAGS, the HCDA shall maintain a detailed development schedule in gant chart format for all NASED projects, indicating milestones from planning through construction. The development schedule shall be updated as appropriate for the mutual benefit of the Parties.

Contract Management. HCDA through its means, which may include contracting with consultants, will manage and administer the NASED development agreements to assure the selected consultants are fulfilling all aspects of its contractual obligations with the State. HCDA shall engage Legal and Financial Advisors to conduct an evaluation of delivery methods /approaches to build a new stadium and ancillary development in the surrounding area. For each delivery method/approach, the evaluation shall include: 1) an achievable project timeline, 2) revenues, expenses, and financing costs using rational assumptions, and 3) strengths, weaknesses and obstacles. Results of the evaluation and analyses shall be used to: 1) communicate with stakeholders (internal and external), and 2) develop the Request for Qualifications (RFQ) and the Request for Proposal (RFP). HCDA with assistance from the Stadium Authority, DAGS, and B&F shall handle communications with the stakeholders.

Contract Encumbrance. Subject to the availability of sufficient funds provided by the State and the release of funds by the governor, HCDA shall endeavor to encumber contracts for NASED redevelopment projects, provided the agreements have prior approvals of the Stadium Authority and HCDA's Authority.

Right to Monitor. HCDA shall have the right to monitor the progress of development, and construction activities throughout the NASED redevelopment. Such monitoring shall include attendance at meetings and teleconferences for the duration of all pre-development and construction phases.

Approvals and Decision-Making. Pursuant to NASED legislation, development decisions arising from the redevelopment of the Site shall be made by the HCDA, however in making its decision, the HCDA shall consider input from the Stadium Authority. To gather input from the Stadium Authority, the HCDA shall provide a report including an analysis and recommendation for Stadium Authority consideration and feedback prior to taking action on the matter.

Project Cost. Pursuant to the NASED legislation the HCDA shall have the right to approve matters having financial impact on NASED redevelopment costs, including but not limited to all contract negotiations with the developer, and any terms, conditions, and procedures established which pertain to or impact Project cost.

Annual Report. HCDA shall prepare in collaboration with DAGS and the Stadium Authority, an annual comprehensive report not less than twenty (20) days prior to the convening of each regular session of the legislature which shall provide status on the progress of development within the District.

MISCELLANEOUS PROVISIONS

Mutual Cooperation by the Parties. Each Party shall cooperate and use all reasonable efforts to satisfy the conditions required to be satisfied by it under this Agreement.

Consents and Approvals. Whenever under the terms of this Agreement the consent or approval of a party is required, such consent or approval will not be unreasonably or arbitrarily withheld.

Assignment. No Party may assign any of its rights under this Agreement, voluntarily or involuntarily, whether by operation of law or any other manner.

Notices. Any notice, request, offer, approval, consent, or other communication required to be given by or on behalf of either Party to the other Party shall be given or communicated in writing by email, or personal delivery, or sent by United States first class mail, or certified mail (return receipt requested with postage prepaid) or express mail service.

Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Amendment. This Agreement may be modified only by mutual written agreement signed by the Parties.

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

Exhibits. The following exhibits are attached hereto and incorporated by reference herein for all purposes:

Exhibit X: District Map

IN WITNESS WHEREOF, DAGS, Stadium Authority, and HCDA have executed this Agreement effective as of the date first above written.

DEPARTMENT OF ACCOUNTING AND
GENERAL SERVICES

By
Its Comptroller
Date

APPROVED AS TO FORM:

Deputy Attorney General for DAGS

Date: _____

STADIUM AUTHORITY

By
Its
Date

HAWAII COMMUNITY DEVELOPMENT
AUTHORITY

By

Its Executive Director

Date

APPROVED AS TO FORM:

Deputy Attorney General for HCDA

Date: _____