

**FOR ACTION**

**I. SUBJECT**

Consider Authorizing the Executive Director to Enter into a Memorandum of Agreement with the State of Hawaii, Department of Land and Natural Resources pursuant to § 206E-4 (17) Hawaii Revised Statutes, to Receive Funding and Execute Contracts to Conduct a Strategic Assessment and Market Study for the Banyan Drive Area on the Waiākea Peninsula on Hawai‘i Island.

**II. BACKGROUND**

The Department of Land and Natural Resources (“DLNR”) owns approximately 79 acres of land in the Banyan Drive Area on the Waiākea Peninsula near downtown Hilo. A fact sheet showing the DLNR’s land holdings and tenure is attached hereto as Exhibit “A”. A bill was introduced during the 2023 legislative session that would have established, among other things, a community development district for the Banyan Drive area.

DLNR has requested HCDA assistance in preparing a strategic assessment to inform policy makers on the feasibility of possible land uses for Banyan Drive. The strategic assessment will include a literature review of past studies for the area, stakeholder input, and conceptual market studies. DLNR staff will assist with gathering such studies and assessments in their possession. HCDA will try to leverage local resources, as much as possible, to facilitate the community engagement.

The results of the assessment will inform the Department, area elected officials, and stakeholders of the possible next steps for the Banyan Drive area.

**III. DISCUSSION**

The Department and the HCDA shall enter into a memorandum of agreement that includes, but is not limited to, the following terms:

- HCDA shall procure the services of a planner to conduct the strategic assessment for Banyan Drive on behalf of the Department, that includes market analysis, infrastructure adequacy, and consultation with identified stakeholders.
- The Department shall transfer \$225,000 or so much as is necessary to (i) pay for the services of the Consultant and other project related expenses, such as necessary travel, and (ii) reimburse HCDA for services provided based upon the fee schedule used by the State of Hawaii, Department of Accounting and General Services (see Comptroller’s Memorandum No. 2023-02), and reasonable travel expense;
- The Department shall work with the selected planner and HCDA to provide requested background materials, including past studies, and assessments related to Banyan Drive;
- Completion of the strategic assessment is targeted for January 2024; and

- HCDA and the Department shall execute a memorandum of agreement, substantially in the form attached hereto as Exhibit “B” in draft form, and subject to review by Deputy Attorney General’s office.

HCDA’s assistance with this project is also subject to DLNR staff receiving approval from the Board of Land and Natural Resources to engage the assistance of HCDA with this project.

Staff from the planning and development team will be assigned to this project. Staff capacity exists to assist DLNR with this project.

**IV. RECOMMENDATION**

Authorize the Executive Director to Enter into a Memorandum of Agreement with the State of Hawaii, Department of Land and Natural Resources pursuant to § 206E-4 (17) Hawaii Revised Statutes, to Receive Funding and Execute Contracts to Conduct a Strategic Assessment and Market Study for the Banyan Drive Area on the Waiākea Peninsula on Hawai’i Island.

Prepared By: Garet Sasaki, Administrative Services Officer 


Reviewed By: Craig K. Nakamoto, Executive Director 

Exhibit “A”: Fact Sheet

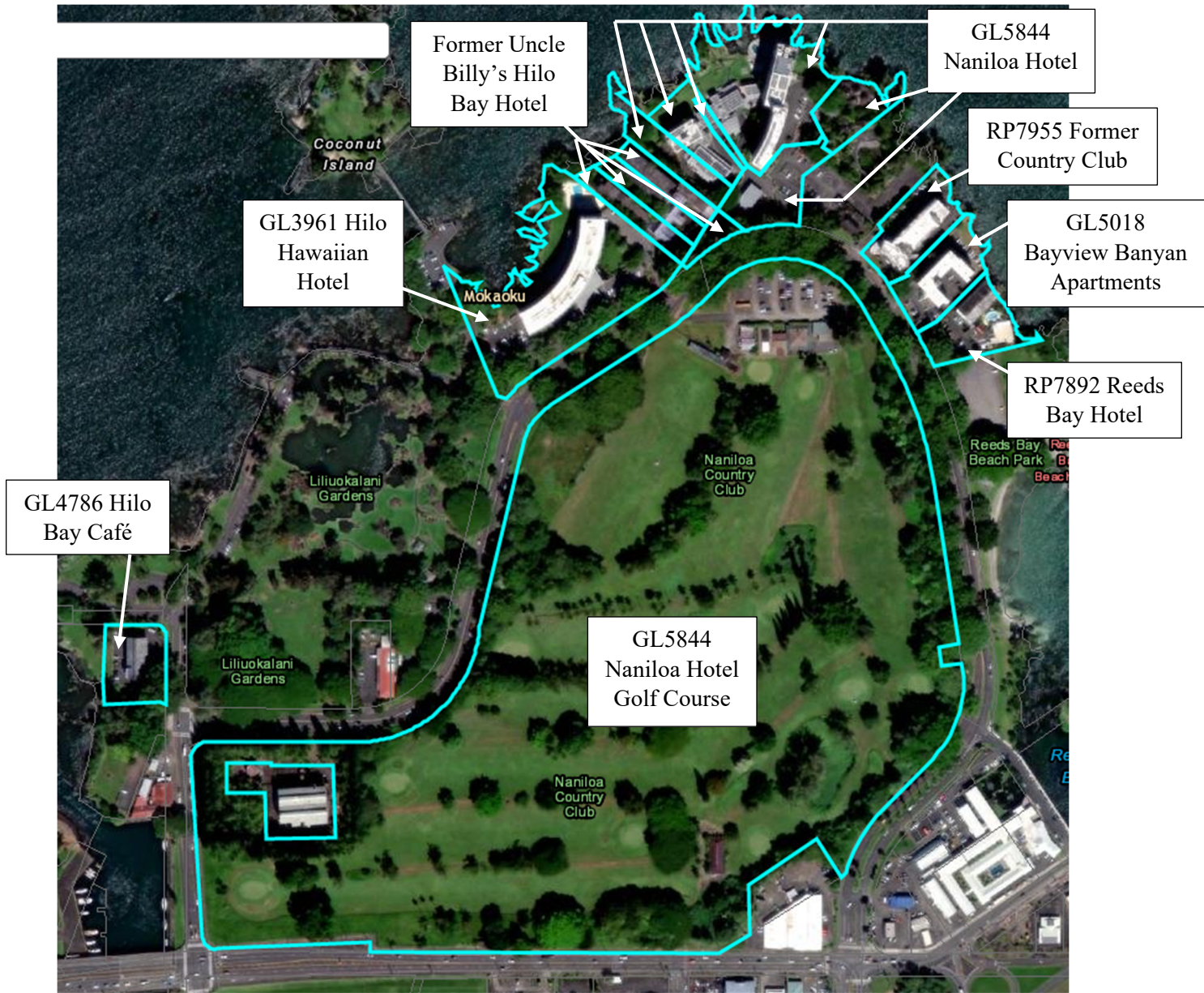
Exhibit “B”: Draft Memorandum of Agreement

### BANYAN DRIVE FACT SHEET

The State is the owner of most of the land on Waiakea Peninsula in Hilo. The Department of Land and Natural Resources manages six leases and revocable permits situated on the peninsula's Banyan Drive generating about \$1 million in revenue annually (see attached map). The leases and permits are as follows:

Lease/Permit Number	Annual Rent	Description
GL3961	\$185,400.00 or 2% of gross revenue, whichever is higher	Issued to Hilo-Hawaiian Associates, Inc. for the Hilo Hawaiian Hotel. The lessee invested over \$5 million in the renovation of this 286-room hotel in 2013-14 in exchange for the Board approving a 37-year extension of its lease. Lease term runs through April 14, 2068.
GL4786	\$43,758.00	Issued to Hilo Trading Company Ltd. for Hilo Bay Café Restaurant. Lessee renovated the restaurant in 2013 after acquiring it from the operator of the Nihon Restaurant previously situated on this site. Lease term runs through March 22, 2037.
GL5018	\$51,600.00	Issued to Bayview Banyan Corp. for apartment building use. Lease term runs through May 18, 2032.
GL5844	\$580,270.44 or 2% of gross revenue, whichever is higher	Issued to WHR LLC for the Grand Naniloa Hotel, including the golf course. The lessee invested over \$20 million in the renovation of this 381-room hotel in 2018. Lease term runs through January 31, 2071.
RP7892	\$41,288.16	Issued to Reeds Bay Resort Hotel Ltd. for a hotel. This property is currently under a month-to-month revocable permit.
RP7955	\$55,628.88	Issued to Banyan Drive Management LLC for apartment and hotel purposes (former Country Club Condominium Hotel site). This property is currently under a month-to-month revocable permit. At its meeting of July 22, 2022, under Item D-5, the Board approved an RFQ/RFP that was published on September 1, 2022. Two proposals were timely received in response and staff is preparing a recommendation to the Board to approve a proposal for renovation of the 152-room property for apartment and hotel purposes under a new long-term lease.
<b>Total annual base rent:</b>	<b>\$1,001,445.48</b>	

The Department also manages the shuttered former Uncle Billy's Hilo Bay Hotel property. The land is unencumbered and the Department is currently in the planning phase of the demolition of the structures on that site. Liliuokalani Gardens is under Governor's Executive Order No. 276 to the County of Hawaii.



Waiakea Peninsula  
Hilo, Hawaii

MEMORANDUM OF AGREEMENT BETWEEN THE STATE OF HAWAI‘I, HAWAI‘I  
COMMUNITY DEVELOPMENT AUTHORITY, AND THE STATE OF HAWAI‘I,  
DEPARTMENT OF LAND AND NATURAL RESOURCES REGARDING BANYAN DRIVE,  
HILO, HAWAI‘I ISLAND

THIS MEMORANDUM OF AGREEMENT (“MOA”), dated as of \_\_\_\_\_, made by and between the HAWAI‘I COMMUNITY DEVELOPMENT AUTHORITY (“HCDA”), a public body and a body corporate and politic of the State of Hawai‘i, doing business at 547 Queen Street, Honolulu, Hawai‘i, 96813, and the DEPARTMENT OF LAND AND NATURAL RESOURCES (“DLNR”), a public body and a body corporate and politic of the State of Hawai‘i, doing business at 1151 Punchbowl Street, Honolulu, Hawai‘i, 96813 (collectively the “Parties”).

RECITALS

WHEREAS, the Banyan Drive area on the Waiākea Peninsula of the island of Hawai‘i is a tree-lined street at the shoreline of Hilo that is centrally located near downtown Hilo and the Hilo International Airport; and

WHEREAS, the DLNR owns 79 acres of land in the Banyan drive area that is being leased for various hotel and residential-related uses; and

WHEREAS, the DLNR procured a consultant to prepare a market study for the Banyan Drive area in July 2014, that suggested infrastructure improvements may be necessary to support the redevelopment of the Banyan Drive area; and

WHEREAS, the County of Hawai‘i established the Banyan Drive Hawai‘i Redevelopment Agency (BDHRA) in 2016 and developed a draft conceptual redevelopment plan that envisioned a mix of cultural and community recreational uses (Kīpuka) along with enhanced resort and recreational activities; and

WHEREAS, the Banyan Drive area presents a unique opportunity to plan a district where hotel and resort, commercial, industrial, and public uses can coexist compatibly within the same area; and

WHEREAS, HCDA is a body corporate and public instrumentality of the State of Hawai‘i (hereinafter “State”) responsible for establishing community development plans and rules in community development districts under HCDA’s regulatory jurisdiction, determining community development programs; and cooperating with private enterprise and the various components of federal, state, and county governments to bring community development plans to fruition

WHEREAS, the DLNR has asked HCDA to assist in (i) procuring a planning consultant (“Consultant(s)”) to perform an updated strategic assessment, including but not limited to

feasibility, infrastructure and market studies (“Study”), and (ii) to manage the Consultant and project manage the Study; and

WHEREAS, HCDA is permitted to assist other State agencies with projects located within or outside of HCDA’s established community development districts pursuant to Section 206E-4(14), Hawaii Revised Statutes;

NOW, THEREFORE, in consideration of the mutual duties and obligations contained in this MOA, the Parties agree as follows:

I. HCDA’s Obligations. HCDA shall:

- A. Prepare, solicit, and execute the planning contract(s) in coordination with DLNR and subject to DLNR’s final approval. Such contract shall include, but not be limited to the engagement of Consultant(s) for the preparation of the Study;
- B. The procurement shall include a target date of January 2024 for completion of the Study;
- C. Provide project management services in connection with the performance of the Study by the Consultant(s);
- D. Provide to the Consultant(s) existing planning and marketing documents and studies previously performed, where available;
- E. To the extent the contract(s) have phases, manage the implementation of each phase with the Consultant(s) and DLNR so that the phases of the scope of work will be implemented seamlessly and efficiently, and name one HCDA representative as HCDA’s point of contact; and
- F. Attend and participate in the community engagement sessions to be performed primarily by the Consultant.

II. DLNR’s Obligations. DLNR shall:

- A. Provide input to HCDA on the scope of work for the Consultants and give final approval on the scope of work;
- B. Assist HCDA in selection of the Consultant(s);
- C. Appoint one DLNR staff member as DLNR’s point of contact;
- D. Support the community engagement process, including identifying community stakeholders for engagement and identifying community members or elected officials who may conduct an engagement session;
- E. Provide pertinent background, and planning information (to the extent available) for the Banyan Drive area in a timely manner;
- F. Transfer by way of journal voucher the amount of \$225,000, or so much as is necessary, from DLNR’s Land Division’s special land and development fund to HCDA’s Account No. \_\_\_\_\_, to be expended by HCDA to (i) pay for the

services of the Consultant and other project related expenses, such as necessary travel, and (ii) reimburse HCDA for services provided based upon the fee schedule used by the State of Hawaii, Department of Accounting and General Services (see Comptroller's Memorandum No. 2023-02), and reasonable travel expenses; to the extent that any such funds remain after the project is completed or terminated, HCDA shall transfer the remaining funds to DLNR after payment of all earned Consultant fees and costs; and

- G. Review and comment on work products in a timely manner.
- III. Term. This MOA shall be effective as of the date listed above and shall continue until the fulfillment of the objectives of this MOA by mutual agreement of both parties. Upon termination of this MOA, HCDA and DLNR shall be released from any further obligations hereunder.
- IV. Amendments, Waiver. This MOA can only be changed by an instrument in writing signed by HCDA and DLNR. The terms of this MOA may not be waived, modified, or in any way changed by implication, through conduct, correspondence, or otherwise, unless such waiver, modification, or change shall be specifically agreed to in writing by HCDA and DLNR. Any waiver in whole or in part to any of the terms and conditions hereunder, shall be specific and not general. Each waiver shall only apply to specific conditions and circumstances.
- V. Relationship of Parties; Independent Contractor. Nothing in this MOA shall be deemed to create a partnership, joint venture, agency trust, or similar relationship between the parties, and neither party shall be deemed to be an agent of the other party. The relationship of the parties hereunder is that of independent contractors, and each party is an independent contractor and shall maintain sole and exclusive supervision and control over its respective personnel and operations involved in assisting in the performance of such obligations.
- VI. Binding Effect of Agreement. This MOA shall be binding upon and inure to the benefit of HCDA and DLNR, and their respective successors and assigns.
- VII. Termination. Any Party may terminate this MOA upon thirty days written notice to the other Parties. In the event of termination: (a) HCDA shall be responsible for transferring any ongoing work resulting from the date of termination of the MOA to DLNR, and (b) HCDA shall pay all Consultant fees to the Consultant earned to the date of termination; and (c) HCDA shall return to DLNR such funds that are unused in accordance with Section I.F.
- VIII. Gender and Number. The use of any pronoun in reference to HCDA and DLNR shall be construed to mean the singular or plural, the masculine, feminine or neuter, as the instrument and context may require.

- IX. No Party Deemed Drafter. The parties agree that neither HCDA nor the DLNR shall be deemed to be the drafter of this MOA and in the event this MOA is ever construed by a court of law, such court shall not construe this MOA or any provision hereof against any party as the drafter of this MOA.
- X. Counterparts. This MOA may be executed in one or more counterparts, each of which shall be deemed an original, and said counterparts will together constitute one and the same agreement and shall be binding on each of the Parties notwithstanding that all of the Parties are not signatory to the original or the same counterpart. The submission of a signature page by facsimile transmission, or similar electronic submission facility (e.g., e-mail or electronic signature) shall be deemed to constitute an “original” signature page for all purposes (other than recordation), and facsimile or electronic copies shall be deemed to constitute duplicate originals.
- XI. No third-party beneficiaries. No person or entity is intended to be a third-party beneficiary of this MOA.
- XII. Invalidity of Provision. If any provision of this MOA as applied to any party or to any circumstances shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way effect any other provision under circumstances different from those adjudicated by the court, or the validity or enforceability of this MOA.
- XIII. Applicable Law. This MOA shall be interpreted in accordance with the laws of the State of Hawai‘i as such laws are construed and amended from time to time.
- XIV. Headings and Captions. The headings and captions of paragraphs or other parts hereof are for convenience of reference only and are not to be used to construe, interpret, define, or limit the paragraphs to which the respective headings and captions may pertain.
- XV. Entire Agreement. This MOA constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof, as of the effective date of this MOA. It shall supersede any and all prior communications, representations, or agreements, verbal or written between the parties regarding the subject matter hereof only as described herein. This MOA may not be modified except by a written instrument signed by both parties.



- XVI. Notices. Any written notice required to be given by any party to this MOA shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. 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.

Notice to the HCDA shall be addressed to:

Executive Director  
Hawai'i Community Development Authority  
547 Queen Street  
Honolulu, Hawai'i 96813

Notice to the DLNR shall be addressed to:

Land Division Administrator  
Department of Land and Natural Resources (Main Office)  
1151 Punchbowl Street, room 220  
Honolulu, Hawai'i 96813

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

Approved by the Land Board on July \_\_, 2023, Item no. \_\_

STATE OF HAWAI'I,  
HAWAI'I COMMUNITY  
DEVELOPMENT AUTHORITY

STATE OF HAWAI'I,  
DEPARTMENT OF LAND AND  
NATURAL RESOURCES

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

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

Its: Executive Director

Its: Chairperson

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

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

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Deputy Attorney General

\_\_\_\_\_  
Deputy Attorney General