

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

July 14, 2023

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

OAHU

Authorize the Chairperson to Negotiate, Approve and Execute a Memorandum of Agreement Between the Department of Land and Natural Resources and the Hawaii Community Development Authority Regarding the Funding of a Strategic Assessment for the Banyan Drive on the Island of Hawaii.

The Department owns 79 acres of land in the Banyan Drive area that is being leased for various hotel and residential-related uses on the Waiākea Peninsula of the Island of Hawai‘i. Banyan Drive is a tree-lined street at the shoreline of Hilo that is centrally located near downtown Hilo and the Hilo International Airport. The Department 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. The Department now seeks to expand the work done in the prior market study by developing an updated strategic assessment for the region.

The Department has consulted with the Hawaii Community Development Authority (HCDA) to assist with (i) procuring a planning consultant to perform an updated strategic assessment, including but not limited to feasibility, infrastructure and market studies, and (ii) to manage the consultant and project manage the strategic assessment to plan a district where hotel and resort, commercial, industrial, and public uses can coexist compatibly for the Banyan Drive area. The assessment would include market, feasibility and infrastructure studies. In order to facilitate this project, the Department is seeking approval from the Board to enter into a Memorandum of Agreement (MOA) with HCDA. A draft of the MOA is attached as **Exhibit A**.

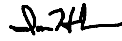
Per the terms of the MOA, the Department would provide funding for the assessment in the amount of \$225,000.00 or so much as necessary, as well as assist HCDA to select the consultant. The Department would also provide assistance to review and approve work done by the consultant, support the community engagement process, and provide background information. Staff believes that this assessment will assist policymakers understanding the basic infrastructure needs to promote the successful redevelopment of the Banyan Drive area.

RECOMMENDATION: That the Board:

- 1) Authorize the Chairperson to negotiate, approve and execute a Memorandum of Agreement between the Department and the Hawaii Community Development

Authority regarding the funding of an updated strategic assessment for the Banyan Drive area on the Island of Hawaii.

Respectfully Submitted,



Ian Hirokawa
Special Projects Coordinator

APPROVED FOR SUBMITTAL:



Dawn N.S. Chang, Chairperson *RT*

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