



RESOLUTION

AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE DEPARTMENT OF HAWAIIAN HOME LANDS, STATE OF HAWAII, RELATING TO THE SALE OR EXCHANGE OF PARCELS OF LANDS LOCATED IN WAIAWA AND KAPOLEI, OAHU, HAWAII.

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, requires that any intergovernmental agreement or any amendments thereto which places an obligation upon the City or any department or agency thereof shall require prior City Council's consent and approval; and

WHEREAS, Chapter 1, Article 8, Revised Ordinances of Honolulu 1990, as amended, also requires that, when carrying out the provisions of any intergovernmental agreement, all applications and/or other official communications which support the application and which are required to be provided by the City or its component departments to any other governmental or quasi-governmental agency shall first be presented to the City Council for its review and approval prior to their transmittal; and

WHEREAS, the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") and the City Department of Transportation Services ("DTS") have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, DHHL is the fee owner of the Ewa Facility Drum site situated in Waiawa, Oahu, identified as Tax Map Key numbers (1) 9-4-08: 010 and (1) 9-6-03: 044; consisting of approximately 55.842 acres; and

WHEREAS, the City is the fee owner of certain properties, identified as a portion of Varona Villages, situated in Kapolei, Oahu, and further identified as first, a portion of Tax Map Key: (1) 9-1-17-69, which consists of approximately 33.253 acres, and second, a portion of Tax Map Key: (1) 9-1-17:075, which consists of approximately 18.808 acres ("City Property"); and

WHEREAS, DHHL and DTS wish to have DHHL and the City enter into an agreement to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, DHHL and DTS desire that pending the sale or exchange of properties between DHHL and the City, the Parties grant each other the necessary



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property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, such an arrangement would impose certain obligations on the City necessitating an intergovernmental agreement between the City and DHHL; now, therefore

BE IT RESOLVED by the Council of the City and County of Honolulu that the Mayor or the Director of DTS, or the Director's designee, is hereby authorized to execute a Memorandum of Agreement with DHHL in substantially the same form as the proposed Agreement attached hereto as Exhibit "A";

BE IT FURTHER RESOLVED that prior to the consummation of any sale or exchange between the parties of the aforesaid properties, the City administration shall seek City Council approval for any such sale or exchange in accordance with Chapter 37, Article 1, Revised Ordinances of Honolulu 1990, as amended, which governs the disposal of city real property by sale or exchange;



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BE IT FINALLY RESOLVED that the clerk be and hereby is directed to transmit copies of this Resolution to the Mayor, City and County of Honolulu, and the Director of the Department of Transportation Services, Frank Fasi Municipal Building, 650 S. King Street, Honolulu, Hawaii.

INTRODUCED BY:

Todd Apo (br)

Councilmembers

DATE OF INTRODUCTION:

November 25, 2009

Honolulu, Hawaii

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is entered into on this _____ of _____, 2009, by and between the Department of Hawaiian Home Lands, State of Hawaii ("DHHL") and the City and County of Honolulu, a municipal corporation of the State of Hawaii ("City").

PURPOSE

WHEREAS, DHHL and the City have identified an opportunity to achieve their respective land use and management objectives through the conveyance of certain lands in Waiawa and Kapolei, Oahu, Hawaii, through either mutual fee simple sale or an equal-value exchange; and

WHEREAS, DHHL and the City have agreed to sell or exchange these parcels of land when the City receives the Record of Decision from the Federal Transit Administration ("FTA") for the Honolulu High-Capacity Transit Corridor Project, a FTA New Starts project; and

WHEREAS, DHHL and the City have agreed that pending the sale or exchange of properties between DHHL and the City, the Parties shall grant each other the necessary property interests in each other's property so that each may take possession of the other's property at the earliest possible moment; and

WHEREAS, the purpose of this MOA is to guide and govern all actions necessary to accomplish the transfer of title to each respective property from each Party to the other by sale or exchange,

NOW THEREFORE, the Parties mutually acknowledge that the consideration for the execution hereof are their respective mutual covenants and their respective benefits inuring herefrom, and hereby agree to sell or exchange their respective properties according to the following terms, covenants, conditions, and provisions:

EXCHANGE or SALE PROPERTIES

DHHL is the fee owner of the Ewa Facility Drum site suitable for conveyance to the City by sale or exchange. The property is identified as Tax Map Key numbers (1) 9-4-08: 010 and (1) 9-6-03: 044; consisting of approximately 55.842 acres; described in detail in Exhibit A and made a part hereof ("DHHL Property").

The City is the fee owner of certain properties situated in Ewa, Oahu, suitable for conveyance to DHHL by sale or exchange. These properties consist of first, a portion of Tax Map Key: (1) 9-1-17-69, which consists of approximately 33.253 acres, and the second, a portion of Tax Map Key: (1) 9-1-17:075, which consists of approximately 18.808 acres, both of which are shown more fully on the map attached hereto as Exhibit B and made part hereof ("City Property").

AGREEMENT

1. Value of Sale/Exchange Properties. DHHL and the City agree that the value of the sale/exchange properties shall be based on appraisals of fair market values for the sale/exchange properties. The appraisals will be based on the "Uniform Standard of Professional Appraisal Practice" and/or the "Uniform Appraisal Standards for Federal Land Acquisitions."
2. Sale or Exchange of Properties.
 - a. Sale of Properties. In the event that the parties agree to the sale of the properties, DHHL and the City are obligated to the following:
 - (1) DHHL agrees to sell and convey to the City and the City agrees to purchase, the DHHL Property, subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis.
 - (2) City agrees to sell and convey to DHHL and DHHL agrees to purchase, the City Property,

subject to and in accordance with the terms and conditions set forth in a purchase and sale agreement, the form and content of which shall be mutually agreed upon by the parties for a sale by quitclaim deed on an "as is", "where is" basis, and subject further that the City Property is properly subdivided for conveyance.

- b. Exchange of Properties. In the event that the parties agree to the exchange of the properties, the parties shall execute a Land Exchange Agreement, the form and content of which shall be mutually agreed upon by the parties for an exchange on an "as is", "where is" basis. Furthermore, in the event of an exchange of properties, DHHL and the City are obligated to the following:

- (1) DHHL shall convey and the City shall accept title to the DHHL property by duly executed and acknowledged quitclaim deeds.
- (2) The City shall convey and DHHL shall accept title to the City property by duly executed and acknowledged quitclaim deeds, subject to the City Property being properly subdivided for conveyance.

3. Approval or Review of Governmental Authorities.

- a. In the event of a sale of the properties described herein, such sale shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission. In the event of an exchange of the properties described herein, such exchange shall be subject to DHHL obtaining the approval of the Hawaiian Homes Commission and the United States of America, acting by and through its Secretary of the Interior.
- b. This MOA, the sale or exchange and any license for the use of the properties described herein shall be subject to the approval of the City Council.

4. Right of Entry and License Agreement: The Parties recognize that each Party will need control and use of the other Party's property prior to the closing of the sale or exchange of the

subject properties ("Closing"). Upon the execution of this MOA, subject to any applicable governmental approvals, and prior to the effective date of the Closing:

- a. DHHL shall execute a License Agreement for the DHHL Property allowing the City and its agents to have access to the property and giving the City full rights of possession of the DHHL Property pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. The City shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with DHHL's provision of the License Agreement to the City.
- b. The City shall execute a License Agreement for the City property allowing the DHHL and its agents to have access to the property and giving the DHHL full rights of possession pending the transfer of title in accordance with the terms and conditions set forth in the License Agreement. DHHL shall be responsible for all claims, demands, liabilities, costs and expenses arising out of or in connection with the City's provision of the License Agreement to DHHL.
- c. During the period from the execution of this MOA to the Closing, neither Party shall allow liens or other encumbrances to attach to any part of the other Party's Property.
- d. In the event the City Council, the Hawaiian Homes Commission or the United States Secretary of the Interior, as applicable, disapproves this MOA, any License Agreements shall terminate immediately; provided, however, that the City shall be allowed on the DHHL property to remove any improvements made thereon by the City and DHHL shall be allowed access to the City property to remove any improvements made thereon by DHHL. Each Party shall be solely responsible for the cost and expense for the removal of improvements.

5. Environmental Analyses and Assessments.
 - a. The Parties will comply with an environmental analysis and related studies as required by the National Environmental Policy Act (NEPA) for their respective properties. In the event of an exchange of properties, the environmental analyses shall be reviewed by the United States Department of the Interior.
 - b. Both Parties will comply with a Phase 1 Environmental Site Assessment report for their respective property and in the event of an exchange of properties such assessments shall be subject to review by the United States Department of the Interior.
 - c. Both Parties will comply with environmental assessments for their respective properties as required under Chapter 343, Hawaii Revised Statutes.
6. Inspection. The Parties' representatives are authorized to enter upon the Sale/Exchange Properties for the purpose of completing due diligence inspections, including environmental audits, and for any other purpose required or permitted by this MOA.
7. Warranties. Except as otherwise provided in this MOA, the Parties agree to accept the Sale/Exchange Properties "as is" and "where is". Neither party has made any warranties, express nor implied, concerning the condition of the Sale/Exchange Properties (other than title, as provided herein) or their fitness for any intended use.
8. Encumbrances. The Parties agree not to sell, convey, or further encumber the Sale/Exchange Properties prior to Closing. Each Party shall convey its Sale/Exchange Property by means of a quitclaim deed free of any mortgages, liens, or other encumbrances.
9. Closing and Related Costs. All closing costs incurred at the time of the Closing shall be shared equally between the parties. Closing shall occur upon the recordation in the Bureau of Conveyances and filing in the Land Court of the State of Hawaii, as applicable, of both DHHL's deed for the DHHL

Property and the City's deed to DHHL for the City Property. The Parties shall coordinate their efforts to ensure that the deeds are simultaneously submitted for recordation and filing.

10. Construction. The Parties have contributed equally to the drafting of this document, which shall not be construed in favor of either. This MOA shall be construed in accordance with the laws of the State of Hawaii.
11. Term. This MOA shall be in force and effect until the land exchange or sale has been completed to the mutual satisfaction of the Parties.
12. Modification. This MOA may be modified by written consent of both Parties to cover any questions that may arise subsequent to the date of this MOA. The MOA may be renewed for an additional term upon written consent of both Parties.
13. Authority. The Parties hereto represent and warrant that this MOA and all instruments, documents and agreements to be executed in connection herewith are or when delivered will be duly authorized, executed and delivered by the Parties hereto and will be valid, binding and enforceable obligations of the parties charged. Each individual executing this MOA on behalf of DHHL or the City represents and warrants to each other that he or she is duly authorized to do so.
14. Legal Descriptions. The Parties acknowledge that legal descriptions suitable for conveyance of title may not be available for all properties identified in Exhibits A and B. Prior to conveyance of any properties identified in Exhibits A and B, in consultation with the other party, each Party shall prepare a legal description, suitable for recordation, for each property.
15. Termination. This MOA will terminate when all conveyances have been completed and approved in writing by both Parties.
16. Assignment. No transfer or assignment of this MOA, or any part thereof or interest therein, directly or indirectly, voluntarily

or involuntarily, shall be made unless such transfer or assignment is first approved in writing by both Parties.

17. Dispute Resolution. The Parties agree to employ a process of negotiation, mediation, or other means of Alternative Dispute Resolution other than binding arbitration to resolve any disagreements that may arise under this MOA, provided however, that each party reserves the right to litigate any dispute that remains unresolved after good faith attempts at Alternative Dispute Resolution.

IN WITNESS WHEREOF, the parties have executed this MOA as of the day and year first written above.

DEPARTMENT OF HAWAIIAN HOME LANDS

By _____
Kaulana H.R. Park
Chairperson of the Hawaiian Homes Commission

CITY AND COUNTY OF HONOLULU

By _____
Mufi Hannemann
Mayor

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND LEGALITY

By _____
Deputy Corporation Counsel
City and County of Honolulu

EXHIBIT A

| <u>Properties</u> | <u>Acres</u> | <u>Location</u> | <u>TMK</u> |
|-------------------|--------------|-----------------|------------|
| Ewa Drum Facility | 56 | Waiawa, Oahu | |

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.

EXHIBIT B

Varona Village 53

Kapolei, Oahu

(1) 9-1-017:069

(1) 9-1-017:075

Acreage amounts are approximate. Precise figures will be obtained and inserted in actual transfer documents.