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Notice of Meeting UNIVERSITY OF HAWAI'I

BOARD OF REGENTS COMMITTEE ON PLANNING AND FACILITIES

Members: Regents Nahale-a (Chair), Paloma (Vice-Chair), Higaki, Kudo, and Westerman

Date: Thursday, October 7, 2021

Time: 10:00 a.m.

Place: Virtual Meeting

In light of the evolving COVID-19 situation, protecting the health and welfare of the community is of utmost concern. As such, this will be a virtual meeting and written testimony and oral testimony will be accepted in lieu of in-person testimony. Meetings may be monitored remotely via the livestream pilot project. See the Board of Regents website for information on accessing the livestream: www.hawaii.edu/bor. Mahalo for your consideration.

AGENDA

- I. Call Meeting to Order
- II. Approval of Minutes of the September 2, 2021 Meeting
- III. Public Comment Period for Agenda Items:

All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via the board's website through the testimony link provided on the [Meeting Agendas, Minutes and Materials](#) page. Testimony may also be submitted via email at bor.testimony@hawaii.edu, U.S. mail, or facsimile at (808) 956-5156. All written testimony submitted are public documents. Therefore, any testimony that is submitted for use in the public meeting process is public information and will be posted on the board's website.

Those wishing to provide oral testimony for the virtual meeting may register [here](#). Given constraints with the online format of our meetings, individuals wishing to orally testify must register no later than 7:00 a.m. on the day of the meeting in order to be accommodated. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

IV. Agenda Items

- A. Atherton Student Housing and Innovation Center (Center) Project at Tax Map Key No. (1) 2-8-016-001:

1. Recommend Board Approval of a Sublease between the University of Hawai'i and UHF RISE Student Housing LLC to allow the University to sublease space in the Center
2. Recommend Board Approval of a Student Housing Affiliation Agreement between the University of Hawai'i and UHF RISE Student Housing LLC to support the Center

V. Executive Session (closed to the public):

A. Legal and Real Estate Matters: *(To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations, and to consult with the board's attorneys on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities, pursuant to Sections 92-5(a)(3) and 92-5(a)(4), Hawai'i Revised Statutes)*

1. Atherton Student Housing and Innovation Center Project at Tax Map Key No. (1) 2-8-016-001

VI. Adjournment

DISCLAIMER - THE FOLLOWING ARE DRAFT MINUTES AND ARE SUBJECT TO FURTHER REVIEW AND CHANGE UPON APPROVAL BY THE COMMITTEE

MINUTES

BOARD OF REGENTS COMMITTEE ON PLANNING AND FACILITIES MEETING

SEPTEMBER 2, 2021

Note: On August 5, 2021, Governor David Y. Ige issued a proclamation related to the COVID-19 emergency that temporarily suspended Chapter 92, Hawai'i Revised Statutes, relating to public meetings and records, "only to the extent necessary to minimize the potential spread of COVID-19 and its variants".

I. CALL TO ORDER

Chair Alapaki Nahale-a called the meeting to order at 10:19 a.m. on Thursday, September 2, 2021. The meeting was conducted virtually with regents participating from various locations.

Committee members in attendance: Chair Alapaki Nahale-a; Vice-Chair Diane Paloma; Regent Benjamin Kudo; and Regent Robert Westerman.

Committee members excused: Regent Wayne Higaki.

Others in attendance: Board Chair Randy Moore; Regent Simeon Acoba; Regent Eugene Bal; Regent William Haning; Regent Ernest Wilson (ex officio committee members); President David Lassner; Vice President (VP) for Administration Jan Gouveia; VP for Community Colleges Erika Lacro; VP for Legal Affairs/University General Counsel Carrie Okinaga; VP for Research and Innovation Vassilis Syrmos; VP for Information Technology/Chief Information Officer Garret Yoshimi; VP for Budget and Finance/Chief Financial Officer Kalbert Young; UH Mānoa Provost Michael Bruno; UH Hilo Chancellor Bonnie Irwin; UH West O'ahu (UHWO) Chancellor Maenette Benham; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Kendra Oishi; and others as noted.

II. APPROVAL OF MINUTES

Regent Westerman moved to approve the minutes of the June 3, 2021, meeting, seconded by Regent Kudo, and noting the excused absence of Regent Higaki, the motion carried with all members present voting in the affirmative.

III. PUBLIC COMMENT PERIOD

Board Secretary Oishi announced that the Board Office did not receive any written testimony, and that no individuals signed up to provide oral testimony.

IV. AGENDA ITEMS

A. Committee Work Plan

Chair Nahale-a referenced the Committee Work Plan (Work Plan) noting that it would be used as an outline of the work to be performed by the committee during the coming year and inquired if regents had any comments.

Regent Westerman questioned why a review of university lease agreements only occurred during the first and second quarters of the academic year. Board Secretary Oishi replied that requests for approval of lease agreements could occur at any time during the year and are reviewed by the committee whenever they are brought forth by the administration. She noted that when the Work Plan was initially developed, the Board Office was made aware of the possibility that approval of lease agreements would be sought in the first and second quarters and therefore noted these reviews in the Work Plan. Chair Nahale-a added that the Work Plan was a dynamic document and did not preclude the committee from reviewing and discussing lease agreements throughout the year. It was his understanding that approval of lease agreements often occurred early in the year to allow the university to budget for those agreements.

Board Chair Moore suggested that the Work Plan denote that the opportunity to review lease agreements could potentially occur in each quarter of the academic year. Board Secretary Oishi stated that the Work Plan would be updated accordingly.

B. Recommend Board Approval of the Fiscal Biennium (FB) 2021-2023 Capital Improvement Project (CIP) Expenditure Plan

VP Gouveia reviewed the proposed CIP expenditure plan (Plan) for FB 2021-2023, stating that the Plan incorporated the most recent legislative appropriations and actions. She noted that projects contained within the Plan generally fall into four categories, including: major projects, which include complete building renovations or the construction of new facilities; renew, improve, and modernize projects, also known as RIM projects, which address repairs and improvements to campus buildings and infrastructure through modernization efforts; minor projects, which are a subset of RIM projects specific to the community colleges; and planning projects, which are those initiatives that support or deliver long-term development plans for future capital investments. She also stated that appropriations for projects specifically identified by the Legislature must be used for that purpose and noted that CIP funding is sometimes provided for projects that were not requested by the university.

The university was allocated approximately \$203.4 million in general obligation funds and \$8.7 million in American Rescue Plan Act funds for a total of about \$212 million in CIP funding for FY 2021-2022. In FY 2022-2023, the university was allotted approximately \$106.6 million in CIP funding. A summarized breakdown of the various projects being funded by the FB 2021-2023 CIP allocation was presented for each of the major units of the university system.

Regent Wilson questioned why the design-build concept was not used for the wastewater discharge system upgrade project at the Waikīkī Aquarium. VP Gouveia replied that the university requested a total of \$10 million in CIP funding for this project but only received approximately \$1.5 million. Based upon available funding, this project needed to be completed using a more traditional design-bid-build approach.

Referencing an appropriation of \$42.5 million for a Resource and Education Center for the community colleges, Regent Wilson asked what this project entailed. Michael Unebasami, Associate Vice President for Administrative Affairs for Community Colleges, responded that this appropriation was for the planning, design, and construction of a six-story building in Wahiawa to house a new Wahiawa Public Library, to consolidate the Department of Education's Central District Office in one building, and both classroom and lab space for the community colleges. However, as this was not a project requested by the university, the administration did not plan to ask for the release of these funds at this time.

Regent Westerman inquired about the process used by the administration in prioritizing CIP projects. VP Gouveia replied that the administration works closely with each respective campus to prioritize CIP projects and determine projected cost estimates.

Regent Wilson requested that VP Gouveia provide a brief explanation of the design-build process. VP Gouveia stated that the traditional method for executing CIP projects is the design-bid-build process which involves numerous steps from securing funding for the design, planning, and construction phases of the project to seeking construction bids. At best, the design-bid-build process takes an average of six years to complete prior to the start of construction. The design-build process is a more streamlined method of project delivery in which one entity works under a single contract with the project owner to provide design and construction services. She stated that use of the design-build process reduces, to about two years, the time it takes to reach the construction phase of a project. Additionally, greater accountability is often realized when a single entity provides both the design and construction services on a project. Although the design-build process is generally more efficient, not all projects, particularly specialized construction projects, are conducive to this process.

Regent Acoba inquired about the implications of not requesting the release of CIP funds for the Resource and Education Center. VP Gouveia replied that, without these CIP funds, projects will not proceed under the university. However, she stated that efforts are underway to determine if funds can be transferred to other agencies that are in a better position to develop some of the projects and allow those agencies to administer the funds through their own CIP development processes.

Noting that \$1.6 million was appropriated for plans, design, construction, and equipment for the College of Tropical Agriculture and Human Resources (CTAHR) – Waiale'e Research Station (Waiale'e), Regent Acoba questioned the use of these funds since it was his understanding that the parcel was being transferred to the Agribusiness Development Corporation (ADC). VP Gouveia stated that efforts to transfer the Waiale'e property to ADC were unsuccessful. VP Young added that the administration has been working with CTAHR over the last year-and-a-half to remove squatters from the Waiale'e property. The \$1.6 million appropriation is for the purposes of continued clean-up of the property including the removal of the remainder of CTAHR assets. Although CTAHR continues to manage the property, the administration is in the process of leasing the property to two lessees with the overall intent of transferring management of the property to the lessees in the future.

Regent Acoba asked about the status of the development of relevant academic programs for the Wahiawa Value-Added Product Development Center (Center) which was a condition placed upon the administration when the board approved entering into a lease agreement with ADC to create and develop the Center. VP Lacro replied that development of the Center is currently in progress. A systemwide group that includes representatives from UHWO and Leeward Community College has been established and is presently working on determining the specific activities that will occur at the Center and developing relevant academic programming in relation to these activities. Once the work of this group is completed, the administration plans on providing a report to the board on possible programmatic activities that will be provided at the Center.

Regent Westerman moved to recommend board approval of the FB 2021-2023 CIP expenditure plan, seconded by Vice-Chair Paloma, and noting the excused absence of Regent Higaki, the motion carried, with all other members present voting in the affirmative.

C. Fiscal Year (FY) 2020-2021 Fourth Quarter CIP Status Report as of June 30, 2021

VP Gouveia provided a report on the status of CIPs through the fourth quarter of FY 2020-2021 specifying that the report includes all design projects over \$1 million and all construction projects in excess of \$5 million. She stated that all projects are moving forward as planned with no significant issues or high-risk projects being identified and highlighted a number of projects that were completed or nearing completion including renovations to Athletic Gyms 1 and 2, renovations to the Clarence T.C. Ching Athletic Complex (Ching Complex), and the demolition of Snyder Hall. She also drew attention to several projects that were added to, removed from, or will be removed from the CIP status report stating that a change from a manual project management system to an electronic project management system resulted in a few active but dated construction projects being added to the report. It was noted that detailed information regarding each of the CIP projects is contained in the committee materials.

Chair Nahale-a commended VP Gouveia and her team for the clear and concise CIP project report provided stating that the report's format made it easy to track and determine the status of each project.

Acknowledging recent criticisms levied against the university with regard to the Ching Complex project, Regent Wilson praised VP Gouveia and her team for their efforts in completing this monumental task in a very short timeframe. He stated that Regents should keep in mind that the university's CIP process has greatly improved and opined that the administration was doing a fantastic job in this regard.

D. University Land-Related Strategic Initiatives and Partnerships Program FY 2020-2021 Fourth Quarter Update

VP Young provided an update on the status of several university land-related strategic initiatives through the fourth quarter of FY 2020-2021 stating that more

detailed information is contained in the committee materials. He highlighted the following:

- **UHWO - University District Lands Project:** It was noted that interest has been expressed, and formal discussions are ongoing, concerning the acquisition of portions of this land for a film studio and that the university is obtaining market value appraisals for this property. Use of various parcels for renewable energy production are also under consideration. Additionally, the university is working with the State Department of Transportation on realigning and widening Farrington Highway as this initiative will encroach on UHWO property in the project area but could also elevate the development possibilities for these parcels.
- **Atherton Project:** This project, which focuses on innovation space and student housing, continues to move forward. The Honolulu City Council recently approved a request to modify the university's Plan Review Use permit to include the Atherton Project. Demolition permits for the project have been issued and commercial tenants have vacated the buildings in anticipation of demolition work. Existing leases with the University of Hawai'i Foundation for the property have been terminated and the university continues to negotiate affiliate and sublease agreements for its inclusion in the project. Bond financing for the project is progressing and is anticipated to occur in October 2021.
- **NOAA Graduate Student Housing Project:** This project, which is a family-oriented mixed-use rental housing project located near the East-West Center, continues to proceed forward. The board approved a second amendment to a limited pre-construction agreement with Greystar Development Services, LLC (Greystar) in May 2021, under which the university would agree to reimburse Greystar for an additional \$1 million in pre-construction costs to continue entitlement and design development efforts through April 2022.
- **Kaimuki/Leahi Hospital Parcels Project:** A Phase I environmental site assessment has been completed for three parcels of university-owned land in the Kaimuki area adjacent to Leahi Hospital and the university continues to evaluate the possible disposition of these lands.
- **University Press Parcel Project:** The university continues to evaluate the potential land-monetization opportunities and disposition of university-owned land in Mānoa Valley which was the former location of the University Press. Efforts are underway to procure a market value appraisal of this parcel.
- **Honolulu Authority for Rapid Transportation (HART) Projects:** These projects involve the coordination and partnership with HART for rail development utilizing university campuses or property for rail stations, transit-related facilities, or potential transit-oriented development. A master use and occupancy agreement (MUOA) has been finalized with work on specific details within the MUOA expected to continue into the second quarter of FY 2021-2022. A request from HART for an alternative UHWO property site to locate a 900-stall interim park-and-ride facility is currently being evaluated by the university.

Regent Acoba requested clarification on whether the university owned the property on which the Atherton Project was located, as well as the responsible party for the project's bond financing. VP Young replied that the university does not own the Atherton property and that a private developer will be seeking bond financing for the project. VP Young further clarified that the bonds will not be university revenue bonds, or the responsibility of the university.

VP Young closed by announcing that the Director of the Office of Strategic Development and Partnerships will begin presenting the quarterly strategic initiatives reports with the start of the new fiscal year.

E. Review and Discussion on Continued Improvements in Planning and Managing Processes Relating to University of Hawai'i Projects

VP Gouveia reviewed the processes for executing CIP projects stating that, in the past, projects experienced lengthy delays and the university received numerous complaints from contractors. It was noted that many of the issues experienced were attributable to a fragmented organization framework for executing CIP projects, manual processing of documents, and a decentralized project management system. To address these issues, the university has developed a centralized organizational framework and electronic procurement process which has resulted in greater efficiency and has led to a reduction of deferred maintenance backlog costs although a backlog of projects still exists. VP Gouveia provided an overview of the centralized organizational framework, electronic procurement process, and electronic project management system stating that the administration is continuously striving to improve the process.

Regent Acoba requested clarification on the impacts the new processes have had on deferred maintenance costs. VP Gouveia explained that, assuming an annual inflation rate of five percent, the administration had projected that the university would be facing deferred maintenance costs of approximately \$1.2 billion in FY 2021 if no changes were made to the methodology for processing CIP projects. However, implementation of the new processes, which began in 2016, had lowered actual costs to \$830 million in FY 2021. The amount of deferred maintenance in FY 2021 would have equated to \$650 million not accounting for inflation.

Chair Nahale-a opined that, if inflation was accounted for, there would have been almost zero growth in deferred maintenance since the new processes were implemented over four years ago. VP Gouveia replied that growth in the deferred maintenance would have been relatively flat as a result of actions taken by the administration if inflation was eliminated from the equation.

V. ADJOURNMENT

There being no further business, Regent Kudo moved to adjourn, seconded by Regent Westerman, and noting the excused absence Regent Higaki, and with all members present voting in the affirmative, the meeting was adjourned at 11:36 a.m.

Respectfully Submitted,

Kendra Oishi
Executive Administrator and Secretary
of the Board of Regents



UNIVERSITY
of HAWAII
SYSTEM

UNIVERSITY OF HAWAII BOARD OF REGENTS
Kalbert K. Young
Vice President for Budget & Finance
Chief Financial Officer

'21 SEP 30 P 1:32


September 30, 2021

TO: Randolph G. Moore
Chairperson, Board of Regents

Alapaki Nahale-a
Chair, Committee on Planning and Facilities
Board of Regents

VIA: David Lassner 
President

FROM: Vassilis L. Syrmos 
Vice President for Research and Innovation

Kalbert K. Young 
Vice President for Budget and Finance/Chief Financial Officer

SUBJECT: Request for Board of Regents Approval of a Sublease and Student Housing Affiliation Agreement between the University of Hawai'i and UHF RISE Student Housing LLC Related to the Atherton Student Housing and Innovation Center

We present for your consideration and action the same actions requested in the attached memorandum submitted (dated) September 10, 2021, for information and discussion at the regular meeting of the Board of Regents on September 16, 2021 ("**Memo**"), with the following changes:

1. Nonprofit Entity has been Identified. At the time of the previous submittal, we were not yet able to identify the nonprofit entity that would serve as the lessor of the Atherton property. The University of Hawai'i Foundation ("UHF") has since established a single-purpose entity, UHF RISE Student Housing LLC, to serve in this role as lessor. UHF is its only member. Wherever the Memo and summary major term sheets for the Student Housing Affiliation Agreement and Sublease Agreement state, "nonprofit entity to be identified," please insert "UHF RISE Student Housing LLC." UHF RISE Student Housing LLC is also referred to as the "Entity" and the "Landlord."

2. Use of Structure after Ground Lease Ends. Based on comments from the Board at its September 16, 2021 meeting, the parties agreed to add the following to the Summary Major Term Sheet for the Student Housing Affiliation Agreement:

According to the Ground Lease entered into between University of Hawai'i Foundation ("UHF") and Entity, the ownership of the Student Housing Facility will revert to UHF upon the termination of the Ground Lease. Consistent with the UHF organization's purpose, chartered in 1955, to advance the UH mission, UHF agrees to continue using the Student Housing Facility to support the UH mission and priorities to provide opportunities for students, alumni, and the public and contribute to institutional excellence. UHF acknowledges and agrees that uses allowed on the Property and within the Project are limited and subject to the LRDP and PRU, as amended.

All other major terms and the transaction described in the Memo and term sheets remain unchanged. The Atherton organizational structure diagram that was presented to the Board on September 16, 2021 has been updated to reflect the UHF RISE Student Housing LLC entity and is included as an attachment.

Attachments:

1. Memorandum from V. Syrmos and K. Young via D. Lassner to R. Moore and A. Nahale-a re Request for Board of Regents Approval of a Sublease and Student Housing Affiliation Agreement between the University of Hawaii and a Nonprofit Entity to be Identified Related to the Atherton Student Housing and Innovation Center, September 10, 2021.
2. Atherton Organizational Arrangement.

c: Executive Administrator and Secretary to the Board Kendra Oishi



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UNIVERSITY OF HAWAII
BOARD OF REGENTS

*21 SEP 10 P 1:05

Kalbert K. Young
Vice President for Budget & Finance
Chief Financial Officer

September 10, 2021

TO: Randolph G. Moore
Chairperson, Board of Regents

Alapaki Nahale-a
Chair, Committee on Planning and Facilities
Board of Regents

VIA: David Lassner
President

FROM: Vassilis L. Syrmos
Vice President for Research and Innovation

Kalbert K. Young
Vice President for Budget and Finance/Chief Financial Officer

SUBJECT: Request for Board of Regents Approval of a Sublease and Student Housing Affiliation Agreement between the University of Hawai'i and a Nonprofit Entity to be Identified Related to the Atherton Student Housing and Innovation Center

A. SPECIFIC ACTIONS REQUESTED

We request the following as further discussed herein:

1. Board of Regents

- a. Sublease Agreement. Board of Regents approval of the Sublease between the University of Hawai'i and a Nonprofit Entity to be identified to allow the University to sublease space in the Atherton Student Housing and Innovation Center currently under construction at Tax Map Key No. (1) 2-8-016-001 ("**Sublease**").
- b. Affiliation Agreement. Board of Regents approval of the Student Housing Affiliation Agreement between the University of Hawai'i and a Nonprofit Entity to be identified to support the Atherton Student Housing and Innovation Center currently under construction at Tax Map Key No. (1) 2-8-016-001 ("**Affiliation Agreement**").

B. RECOMMENDED EFFECTIVE DATE

Upon approval of the Board of Regents.

C. ADDITIONAL COST

1. Sublease

Sublease rent by the University of Hawai'i ("**University**") is \$250,000.00 per year, to be offset by the University's ability to sublet office space.

2. Affiliation Agreement

No cost to the University.

D. PURPOSE

1. Sublease

For a term to end in forty (40) years from the date of occupancy currently projected for summer of 2023, within the Building to be constructed by Developer, the University will sublease a gross leasable area of approximately: (i) 8,978 square feet located on the second floor that will house the University's Pacific Asian Center for Entrepreneurship program ("**PACE Facility**"); and (ii) 14,598 square feet located on the second and third floor to be sublet by the University as a commercial office space ("**Office Facility**"). The PACE Facility and Office Facility is a combined gross leasable area of approximately 23,576 square feet ("**UH Facility**").

The UH Facility will be used for academic classrooms, administrative offices, and program related activities, including academic competitions, receptions, mixers, community events, co-working spaces, club meetings, and to support innovation and companies. The University will sublet space for offices in the Office Facility to offset annual rent. The University is not responsible for any common area maintenance fees but must pay for utilities that serve the UH Facility. The University's uses of the UH Facility are intended to complement the privately run, approximately 220-unit student housing facility, containing 374 beds ("**Student Housing Facility**") and the approximately 1,700 square feet located on the first floor to be leased as a retail space ("**Retail Facility**"). Together, the UH Facility, Student Housing Facility, and Retail Facility is referred to herein as the "**Building**." See Exhibit A, **Summary of Sublease Major Terms**.

2. Affiliation Agreement

For a term to end with the bond repayment for the Project, or approximately 40 years, the University will enter into the Affiliation Agreement to support the

Student Housing Facility. The Student Housing Facility will be privately developed, constructed, and operated with no financial obligation on the part of the University. The Affiliation Agreement ensures a level of service for University students who reside in the Student Housing Facility and coordinates certain operational details with the UH Mānoa campus and Student Housing Services. **See Exhibit B, Summary of Affiliation Agreement Major Terms.**

E. BACKGROUND

UHF Atherton Student Housing LLC, a Hawai'i limited liability company ("**Fee Owner**"), whose sole member is the University of Hawai'i Foundation, a Hawai'i nonprofit corporation, and a recognized 501(c)(3) organization under the Internal Revenue Code ("**Foundation**" and with the Fee Owner, the "**Foundation Entities**"), holds fee simple title to Tax Map Key No. (1) 2-8-016-001 containing approximately 43,107 square feet ("**Property**").

On December 28, 2018, Fee Owner issued a request for proposals entitled "Request for Proposals for the Development of a New Mixed-Use Student Housing/Innovation and Entrepreneurship Project" now known as the "Atherton Student Housing and Innovation Center" ("**RFP**"), which solicited proposals for the development of a multi-use student housing project to be located on the Property as more particularly described in the RFP ("**Project**").

On April 3, 2019, Hunt Development Group, LLC, a Texas limited liability company ("**Developer**") proposed a development concept, along with business, operating, and financing terms contemplated to develop, deliver, operate, and maintain the Project ("**Proposal**"), and based on the Proposal, the Foundation Entities entered into agreements with Developer to develop the Project.

To meet the objective of privately financing the Project, Developer proposed the following financing structure:

- **Public Finance Authority ("PFA")¹ will issue taxable and non-taxable student housing revenue bonds ("**Bonds**").**
- **A nonprofit entity ("**Entity**") will be created or selected use Bond proceeds to:**
 - (i) pay the costs of the acquisition, demolition, renovation, construction, furnishing, and equipping of the Project on the Property;**
 - (ii) establish a debt service reserve funds for the Bonds;**
 - (iii) pay the interest expected to accrue on the Bonds;**
 - (iv) pay working capital and marketing costs associated with the Project;**
 - (v) fund an operating reserve fund;**
 - (vi) fund a coverage reserve fund;**
 - and (vii) pay the costs of issuance.**

¹ PFA is "a governmental entity established under Section 66.0304 of the Wisconsin State Statutes, authorized to issue tax-exempt, taxable, and tax credit conduit bonds for public and private entities throughout all 50 states. PFA is jointly sponsored by the National Association of Counties, National League of Cities, Wisconsin Counties Association and League of Wisconsin Municipalities." See <https://www.pfauthority.org>.

- Entity will enter into a ground lease with the Foundation Entities.
- Entity will sublease the UH Facility to the University.
- Rents generated by the Project will fund debt service, pay for operating expenses to operate the Project, including the Student Housing Facility, and to maintain the Property.
- Any revenues above Project expenses is paid to the Fee Owner.
- The term of bond financing is 40 years.

The University's only involvement in the Project is: (1) entering into the Sublease; (2) entering into the Affiliation Agreement; and (3) sharing in any Project revenue over the life of the Project with Fee Owner.

The University will obtain a sublease from the Entity that will receive a ground lease from Foundation Entities. The University will also enter into an Affiliation Agreement with the Entity. The Entity is contracted by Foundation Entities, not the University. Since the University is collaborating on this project with other project members, the University is aware that the formal choice and selection of the Entity by the Owner has not been completed yet. As such, Administration is not able to identify the Entity as of the writing of this memorandum. Administration anticipates that selection of the Entity will occur imminently. If the Board of Regents approves this request, the Entity must agree to the material terms summarized in Exhibits A and B, attached.

F. APPLICABLE REGENTS POLICY

1. Sublease

Under Board of Regents Policy 10.201, Board of Regents' approval is required for this real property transaction because it is a lease interest with a term exceeding five years. The six decision-making considerations enumerated under Board of Regents Policy 10.201.III.A are addressed in turn as follows.

- a. Promote and support the mission and goals of the university in education, research, service, and economic development.*

The Project integrates student housing and an innovation/entrepreneurship center, funded with private, non-taxpayer money to design, build, finance, and maintain a live, learn, work innovation facility. The Building will provide a dynamic, immersive educational and living experience to enable students to push the frontiers of innovation and entrepreneurship as they become the foundation of a more diverse and sustainable new economy.

The Building will integrate academic and collaborative spaces with student housing and be the new home for the PACE program. The

PACE will use the new environment to guide students in transforming laboratory research into applied commercialization opportunities. It will be a place where innovators can bounce ideas around and find the resources needed to move an idea to the next startup phase.

This Project is also one of several public-private partnerships (“P3”) and real estate projects the University is pursuing to build modern educational facilities more affordably, develop alternative revenue streams to support the University mission, and remain a competitive higher education institution.

- b. Advance principles and practices of sound environmental stewardship and sustainability.*

The Project is being designed to meet Leadership in Energy and Environmental Design (LEED) Silver Certification and will continue to stress sustainability as a key factor in decision making and seek to minimize impervious surfaces on site to reduce potential run-off impacts to the environment. Further, project design efforts will also endeavor to reduce the carbon footprint of the Project both during construction and under operation.

The Project will renovate an iconic and historic building in the Mānoa neighborhood while incorporating a new adjacent building and modern building onto the Property. The facility will enhance the amenities available to the neighborhood and add to the aesthetic of the surrounding community as the gateway to the Mānoa valley.

- c. Ensure that alternative actions are considered, investigated and analyzed.*

Prior to the acquisition of this Property by UHF Atherton Student Housing LLC the property was owned by the YMCA and was used to provide transient housing, which primarily serviced UH Mānoa students. Since 2016, the University leased the Property from the Owner and continued to use the Property for very limited student housing and to generate some revenue from commercial tenants. However, it was determined that the age of the buildings and the cost of renovations would not create positive revenue. The Property was also considered for a publicly funded student housing project; however, the Fee Owner and the University could not justify bearing that cost using public funding. This P3 alternative creates a positive cash flow over time. It creates a stable long-term revenue stream for the Fee Owner and the University without a significant upfront capital investment in developing the Project and without the financial responsibility of the University operating housing on the Property.

- d. *Be fairly priced in the context of applicable fair market values and other relevant factors.*

The University is not contributing any funding for the development, construction, or operation of the Project. The University will rent a portion of the Building (approximately 23,576 square feet), the UH Facility, for the Office of Research and Innovation, and the PACE program at \$250,000.00 per year. The per square foot rental rate is comparable to similar properties.

The University is not responsible for any common area maintenance fees. It is only responsible for the cost of electricity, water, and sewer used within the UH Facility. In addition, the University is allowed to lease commercial office space to offset annual rent. Based on its analysis, the University expects to, at minimum, break-even during the term of the Sublease.

- e. *Generate revenue from real property not critical to long range plans for the university to support the university's core mission.*

This criterion does not apply since this is not University property; however, Fee Owner and University are entering into an agreement whereby Fee Owner will share with the University a portion of the proceeds it receives from revenue generated by the Project over the life of the Project.

- f. *Be consistent with and support long range plans that have been approved by the Board of Regents.*

The Property and the Project have been added to the long-range development plan ("LRDP") for the UH Mānoa campus and the UH Mānoa plan review use permit ("PRU"), which was approved by the Council of the City & County of Honolulu on August 11, 2021. The Project supports the Hawai'i Innovation Initiative, which is one of the five policies as set forth in the University's Strategic Direction, 2015-2021. The Project also supports the guiding principles of the UHM Framework for the Future established to further the University's desire to continue to be a leading global research institution.

2. Affiliation Agreement

Under Board of Regents Policy 8.201, *Contracts and Official Documents*, Board of Regents' approval is required where it is "determined, in consultation with the board, that a contract . . . is anticipated to have a significant impact on policies, programs, or operations."

The Affiliation Agreement entered into here would commit the University to certain obligations for at least 40 years. The purpose of supporting the Project is to allow the development of an additional 220 units and 374 beds of student housing for University students, and an innovative space for the PACE program that integrates their entrepreneurial program with a live, learn, work experience on the UH Mānoa campus. Some of these obligations are relevant because the property is now part of the LRDP and PRU, and some are relevant to ensure UH Mānoa students see some consistency in management and availability of the Student Housing Facility.

University obligations under the Affiliation Agreement do not commit University funds, significant University financial resources, and/or have significant impacts on programs. But, the Affiliation Agreement does commit UH Mānoa, through its usual campus operations, to do the following:

- generally include the Student Housing Facility in overall information and marketing materials regarding student housing available to students attending UH Mānoa and prospective students attending UH Mānoa, commencing at a reasonable time before the anticipated Substantial Completion of the Project;
- provide students residing at the Student Housing Facility with campus related security services and access to the computer network;
- take into account the Student Housing Facility in UH Mānoa planning for future student housing projects that serve students attending UH Mānoa; and
- commit to not construct or otherwise sponsor any additional student housing facilities on the UH Mānoa campus that creates additional student housing beds under certain market conditions.

In exchange, the Entity will agree to:

- directly or indirectly through a management entity be solely responsible for the management and operation of the Student Housing Facility independent from UH and UH Mānoa;
- process residential applications and agreements for the Student Housing Facility;
- provide beds to UH Mānoa students; and
- comply with applicable UH Student Conduct Code policies.

Exhibit B provides additional terms.

G. ACTIONS RECOMMENDED

We recommend the Board of Regents adopt and approve the actions proposed above under Section A, above. Once approved, the President and the Vice President for Budget and Finance/Chief Financial Officer will conclude

**Chairperson Randolph G. Moore
Committee Chair Alapaki Nahale-a
September 10, 2021
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negotiations, finalize and execute the Sublease and Affiliation Agreement, and take such other action and execute such other documents as they determine necessary to implement the Sublease and Affiliation Agreement.

c: Executive Administrator and Secretary to the Board Kendra Oishi

Attachments:

- 1. Exhibit A, Summary of Sublease Agreement Major Terms**
- 2. Exhibit B, Summary of Affiliation Agreement Major Terms**

SUMMARY MAJOR TERM SHEET

SUBLEASE AGREEMENT

Between

**NONPROFIT ENTITY TO BE DETERMINED
and
UNIVERSITY OF HAWAI'I**

**for the
UH Facility Tax Map Key No. (1) 2-8-016-001**

1. PARTIES

- a) Landlord: Nonprofit Entity to be Identified ("**Landlord**")
- b) University: University of Hawai'i ("**University**")

2. DEMISE

- a) Property. Tax Map Key No. (1) 2-8-016-001, containing approximately 43,107 square feet ("**Property**").
- b) Building. A new building to be developed, constructed, and operated on the Property by Landlord comprised of the following elements: (i) a 374-bed student housing facility ("**Student Housing Facility**"); (ii) the PACE Facility; (iii) the Office Facility; and (iv) a gross leasable area of approximately 1,700 square feet located on the first floor to be leased as a retail space ("**Retail Facility**"). The Student Housing Facility, PACE Facility, Office Facility, and Retail Facility being, the "**Building**".
- c) UH Facility. Portion of the Building described as a gross leasable area of approximately 8,978 square feet located on the second floor that will house the University's Pacific Asian Center for Entrepreneurship program ("**PACE Facility**"), and 14,598 square feet located on the second and third floor to be leased as a commercial office space ("**Office Facility**"). Together the PACE Facility and the Office Facility are the ("**UH Facility**"), which will be used and occupied by the University under the Sublease.
- d) License. Landlord grants to University a non-exclusive license to use (and to permit its officers, directors, agents, employees, sublessees, and invitees to use), the Common Areas in the course of conducting business at the UH Facility.
- e) Premises. The "**Premises**" is the UH Facility and Common Areas.

3. TERM

Sublease shall be for forty (40) years. The intent is to commence on August 15, 2023 (“**Effective Date**”) and terminate and expire on July 31, 2063 (“**Expiration Date**”).

4. RENT

- a) Rent. Rent shall be two hundred fifty thousand dollars (\$250,000.00) per year.
- b) Five-Year Rent Increases. On the day after the last day of the fifth (5th) year following the Effective Date, and every fifth (5th) year thereafter, Landlord shall increase rent payable for the following five- (5) year period to an amount equal to the product of the rent set for the previous five years multiplied by a fraction, the denominator of which shall be the Consumer Price Index figure published for the month of the Effective Date and the numerator of which shall be the Consumer Price Index figure for the first (1st) month of the following five (5) years.
- c) Rent Increase Cap. Rent increases shall not exceed ten (10) percent over the previous payment.
- d) University’s Services and Utilities Costs. In addition to rent, University shall pay to Landlord, or directly to the billing entity as the case may be, costs and fees related to the use of the following services and utilities within the UH Facility: (i) air conditioning; (ii) electricity; (iii) WiFi, internet, and other communications-related services; and (iv) water and sanitary sewer services (“**UH Facility Services**”). At Landlord’s cost, UH Facility Services shall be individually metered, measured, and under University's control within the UH Facility
- e) No Other Fees. University shall not be responsible or liable for any other costs, fees, or rent not described above.

5. USE OF PREMISES

- a) Allowed Uses. University shall use the UH Facility for academic classrooms, administrative offices, and program related activities, including academic competitions, receptions, mixers, community events, co-working spaces, club meetings, and to support innovation and business companies.
- b) Right to Sublet. University may sublet available space within the UH Facility, charge rents, and collect costs and fees.
- c) University's Right to Sublet Rents. Landlord is not entitled to any portion of rents, fees, or costs charged by University to University’s sublessees.

- d) License. Landlord grants to University a non-exclusive license to use (and to permit its officers, directors, agents, employees, sublessees, and invitees to use), the Common Areas in the course of conducting business at the UH Facility. Landlord will maintain in good order and condition the Common Areas and will perform such repairs and maintenance as may be reasonably required to maintain the Common Areas in good order and condition.
- e) Parking. Landlord shall make available the following three categories of parking within the Parking Areas: (i) nine (9) reserved parking spaces at cost to University; (ii) visitor parking available at cost on a first-come, first-served basis; and (iii) up to fourteen (14) parking stalls at cost to University annually.

6. UNIVERSITY LIMITATIONS

- a) University Not Authorized to Indemnify. Landlord and University acknowledge and agree that University, as an agency of the State of Hawai'i, is not authorized to indemnify, defend, or hold harmless Landlord in any way, including, without limitation, against any claims for bodily injury, wrongful death and/or property damage by any persons.
- b) Other Terms. Section includes standard University terms limiting University liability.

7. INSURANCE

- a) University is Self-Insured. University, as a sovereignty, is self-insured and therefore insurance, including but not limited to, public liability, property damage, fire, plate glass, and business interruption insurance, is not required.
- b) Landlord Insurance. Landlord will carry fire and extended coverage insurance on the Premises, the Building, and the Property. The insurance shall cover the structural portions of the Premises, the Building, and the Property.

8. TAXES AND ASSESSMENTS

- a) Obligation for Payment. University will pay all taxes attributable to University.
- b) Real Property Tax Exemption. University shall have the right to apply for an exemption from real property taxes.

9. REPAIRS AND MAINTENANCE

- a) Landlord Duty. Landlord has a duty to maintain Building and maintenance for all pipes and conduits and all mechanical, electrical, HVAC and plumbing systems contained within the UH Facility.

- b) University Duty. University shall keep and maintain the UH Facility and all fixtures and equipment located therein in a good, safe, clean, and sanitary condition.

10. IMPROVEMENTS

- a) Base Building. Landlord must deliver the UH Facility in a finished condition for the PACE Facility. The Office Facility will be finished as agreed to by the parties.
- b) Alterations. University and its subtenants may make alterations within the UH Facility.

11. OTHER STANDARD TERMS

- a) Landlord has a right of entry with notice and in emergencies.
- b) In the event of casualty, University may terminate the Sublease or remain in anticipation of rebuilding as provided by terms.
- c) Division of condemnation proceeds, if any.
- d) The Premises may be sublet, mortgaged, or assigned by University.
- e) Default and remedies are defined; neither Party is liable for incidental, special, punitive or consequential damages (including, lost revenues or lost profits) arising out of or in connection with this Sublease.
- f) Force majeure events are addressed, including pandemics.
- g) Landlord's liability is limited to its interest in the Property and the Project.

SUMMARY MAJOR TERM SHEET

**STUDENT HOUSING AFFILIATION AGREEMENT
Atherton Student Housing Facility**

between

**UNIVERSITY OF HAWAI‘I
and
NONPROFIT ENTITY TO BE DETERMINED**

1. PARTIES

- a. University: University of Hawai‘i (“**University**”)
- b. Entity: Nonprofit Entity to be Identified (“**Entity**”)

2. STUDENT HOUSING FACILITY

Entity agrees to finance, develop, construct, and operate a 220-unit student housing facility, containing 374 beds (“**Student Housing Facility**”) for the use of students attending UH Mānoa.

3. UNIVERSITY AGREES

- a. to allow the Project to be part of the long-range development plan for the UH Mānoa campus and the UH Mānoa plan review use permit which was approved by the council of the City & County of Honolulu on August 11, 2021;
- b. generally to include the Student Housing Facility in overall information and marketing materials regarding student housing available to students attending UH Mānoa and prospective students attending UH Mānoa, commencing at a reasonable time before the anticipated Substantial Completion of the Project;
- c. to provide students residing at the Student Housing Facility the following services: campus related security services and access to the computer network;
- d. to take into account the Student Housing Facility in UH Mānoa planning for future student housing projects that serve students attending UH Mānoa; and
- e. not to construct or otherwise sponsor any additional student housing facilities on the UH Mānoa campus that creates additional student housing beds, unless demand for additional student housing beds is supported by a student housing demand study; provided that, this subsection shall not apply to renovation or replacement of UH Mānoa Student Housing Facilities that do not result in additional student housing beds on the UH Mānoa campus. For purposes of this Agreement, “UH Mānoa Student Housing Facilities” means the student housing facilities, located on the UH

Mānoa campus, which are known as Hale Aloha Lehua, Hale Aloha 'Ilima, Hale Aloha Mokihana, Hale Aloha Lokelani, Frear Hall, Gateway House, Johnson Hall, Hale Ānuenue, Hale Kahawai, Hale Laulima, Hale Wainani, Hale Noelani, and the student housing project under development to be located on the parcel identified as Tax Map Key No. (1) 2-8-023:009 by the City & County of Honolulu and commonly referred to as the former NOAA site (approximately 2.21 acres) on Dole Street in close proximity to Burns Hall and Frear Hall.

4. ENTITY AGREES TO

- a. directly or indirectly through a management entity be solely responsible for the management and operation of the Student Housing Facility independent from UH and UH Mānoa;
- b. process residential applications and agreements for the Student Housing Facility;
- c. provide beds to UH Mānoa students; and
- d. comply with applicable UH Student Conduct Code policies, as amended, posted at studentaffairs.manoa.hawaii.edu/policies/conduct_code/, and required UH health clearances before entering the UH Mānoa campus.

5. PARTIES MUTUALLY AGREE

- a. after Substantial Completion of the Project, the Student Housing Facility shall be treated similar to UH Mānoa's treatment of all other UH Mānoa Student Housing Facilities concerning advertising to students attending UH Mānoa;
- b. neither Party shall prioritize or present the Project nor other UH Mānoa Student Housing Facilities as competing facilities;
- c. to cooperate regarding delinquent financial obligations of UH Mānoa student residents related to UH Mānoa Student Housing Facilities and the Student Housing Facility, as permitted by law and UH policy, such as not allowing a UH Mānoa student resident who is delinquent in rent payments to enter into a rental agreement with either UH Mānoa Student Housing Facilities or the Student Housing Facility; and
- d. to participate in good faith as needed on committees or working groups related to the management and operation of the Student Housing Facility, including matters related to rental rates and housing policies.

6. TERM

From and after the effective date (to be determined) to and including when Project bonds are no longer outstanding, approximately 40 years, unless otherwise amended or sooner terminated.

7. EARLY TERMINATION

- a. Mutual agreement by the Parties in writing; or.
- b. Cessation of the Student Housing Facility being offered as and available for student housing for students attending UH Mānoa.

8. RESPONSIBILITY

Neither Party shall be responsible for the acts and omissions of the other Party, or the other Party's employees and agents in carrying out this Agreement.

9. ADVISORY COMMITTEE

- a. Entity will establish an advisory committee which will review and make recommendations to the governing board of Entity regarding the annual operating and capital improvements budgets for the Student Housing Facility, marketing, promotions and advertising plans, review of management reports by the property manager, and other operational issues, including without limitation rental rates and housing policies ("**Committee**").
- b. The Committee is advisory only, with final authority on the approval of budgets and operation of the Student Housing Facility vested in the governing board of Entity; provided however such governing board(s) shall take into account the Committee's recommendations in making its decisions.
- c. The Committee shall have five (5) members, all of whom will be selected and appointed by the governing board of Entity. Two (2) members shall be appointed from a list of candidates provided by UH, one (1) member appointed by the governing board of Entity, and two (2) members appointed from a list of candidates provided by the UH Foundation. All recommendations from the Committee shall be made by majority vote.

10. UNIVERSITY LIABILITY

University shall have no liability with respect to the Bonds or the other indebtedness of Entity, or for any expenses incurred in connection with the development, construction, management, maintenance repair, replacement or operation of the Student Housing Facility by Entity.

11. OPERATIONAL DETAILS

Parties shall mutually agree to operational details consistent with this Agreement.

Atherton Organizational Arrangement

Attachment 2

