


STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

January 27, 2009

To: Chairman and Members, Hawaiian Homes Commission

From: Linda Chinn, Administrator
Land Management Division 

Subject: Assignment and Amendment of License Agreement No. 603;
Hawaiian Community Development Enterprises, LLC,
Kalaeloia, Oahu

RECOMMENDED MOTION/ACTION

That the Hawaiian Homes Commission (HHC) consent to the assignment of License Agreement No. 603, as amended (hereinafter "the License"), from the Hawaiian Community Development Enterprises, LLC, (ASSIGNOR), to the Hawaiian Community Development Board, a Hawaii 501(c)(3) non-profit organization, as (ASSIGNEE); and approve amending the License to incorporate the additional terms and conditions as follows:

1. The License shall be extended for five (5) years commencing February 9, 2009, and expiring February 8, 2014.

2. The License shall be amended to allow ASSIGNEE to sub-rent portions of the licensed area to others provided:

a. ASSIGNEE remains primarily liable and responsible for compliance and enforcing sub-tenants' compliance with all terms and conditions of the License.

b. ASSIGNEE may sub-rent to an entity that needs to place an above-ground fuel storage tank and re-fuel equipment on the licensed area, provided ASSIGNEE first submits written certification from the Environmental Protection Agency (EPA), or other government agency having jurisdiction in the matter, that said fuel storage and re-fueling facility/activity meets the requirements of and are in compliance with all laws, regulations, ordinances, etc., that help prevent contamination of the environment, including any subsequent re-certification as may be required by said agency and/or LICENSOR.

c. ASSIGNEE shall not sub-rent to those who store hazardous materials or do major engine and/or equipment repairs beyond minor repairs, such as headlight, tire, or battery replacement, unless ASSIGNEE first requests and obtains LICENSOR'S approval which may be withheld or contingent on ASSIGNEE meeting additional conditions.

d. ASSIGNEE submits a quarterly report informing LICENSOR of each sub-tenant's name, monthly rent, type of use, area of rented space, and length of rental agreement.

3. ASSIGNEE shall provide administrative and technical services to assist not less than twenty-five (25) Hawaiian Home Lands' beneficiaries in replacing their homestead residences within the five-year extended term of the License. Said services shall be the same as those described in the Scope of Services that are a part of Professional Services Contract No. 52388 (Contract 52388) between LICENSOR and ASSIGNEE. A copy of Contract 52388 shall be attached as an exhibit to the License.

4. Except for changes in the method of compensating ASSIGNEE, as described below, all other obligations of ASSIGNEE and LICENSOR under Contract 52388 that have not been met shall remain unchanged and shall be incorporated into the License, including eight (8) replacement homes and down payment assistance for at least 9 projects, not to exceed \$137,250.00. Within the five-year extended term, ASSIGNEE will assist not less than 17 homestead families to replace uninhabitable or unsafe homes and the eight replacement homes remaining under Contract 52388 for a total of 25 replacement homes as mentioned in item #3 above. In addition to the \$137,250.00 remaining from Contract 52388, ASSIGNEE may apply for additional grant funds for downpayment assistance; however, the lack of downpayment assistance will not relieve ASSIGNEE from the obligation to assist at least 25 families within the five-year extended term.

5. The monthly rent for the first year of extended term of the License shall be increased from the present rent of \$11,600.00 to \$16,600.00. As compensation for services rendered in conjunction with the replacement home program, and in lieu of remaining compensation as stated in Contract 52388, LICENSOR and ASSIGNEE agree to offset up to \$5,000.00 per month in rent during the first year of the extended term of the License and for each successive year of the extended term provided:

a. ASSIGNEE submits a detailed quarterly report quantifying the services rendered for the period. LICENSOR shall review each quarterly report and inform ASSIGNEE if

the services rendered for the period are acceptable or insufficient. If, after an annual re-evaluation, LICENSOR determines that ASSIGNEE'S services for the year are insufficient, the rent and any offset thereto, may be adjusted by LICENSOR for the subsequent year.

b. The maximum rent offset of \$5,000.00 per month, which could be a total \$300,000.00 over the extended 5-year term off the License, shall include any and all remaining compensation ASSIGNEE would have been entitled to under Contract 52388. Therefore, upon commencement of the extended term of the License, ASSIGNEE agrees that all further compensation for technical assistance due under Contract 52388 shall cease and any funds remaining in Contract 52388 shall be utilized for downpayment assistance.

c. The maximum rent offset, or a portion there of shall apply provided ASSIGNEE continues to seek and assist LICENSOR'S beneficiaries in replacing their homes even if there are no additional grant funds available.

6. Other standard terms and conditions of similar licenses issued by DHHL.

7. The agreement between ASSIGNOR and ASSIGNEE (the assignment document), the Consent to Assignment, and the amendment of License Agreement No. 603 shall all be subject to the review and approval of the Department of the Attorney General.

8. Other terms and conditions deemed prudent by the Chairman of the Hawaiian Homes Commission.

DISCUSSION

The Hawaiian Community Development Enterprises, LLC (HCDE) whose President and CEO is Mr. Kali Watson, was issued License Agreement No. 603 (LA 603) for a five-year term commencing February 9, 2004, and expiring on February 8, 2009. HCDE's initial business plan was to operate a used car sales facility on the 5-acre licensed area. HCDE's plan was to purchase, at auction, vehicles donated to various charitable organizations, then repair and recondition them for resale to the general public. HCDE invested significant resources in clearing off debris and overgrowth, and paving and fencing the entire property. It worked with the Navy to restore electricity and water to the property. As a community service, HCDE also totally

rehabilitated the abandoned adjacent military motor pool buildings for Kapolei High School's Vocational Training Program, and is also paying its rent and utilities. In addition to the rent, DHHL was to benefit from HCDE's plan to hire and use native Hawaiians from the Vocational School in its automobile business. However, within months of starting the business, the law for income tax incentives for these types of charitable donations was changed which significantly reduced the number of vehicles being donated and available for auction. Because of a drop in available inventory, HCDE requested and was allowed to store boats and other kinds of equipment owned by others to help pay the DHHL rent, cover operational expenses, and recover the cost of improvements. Over time, the sale of used vehicles has shrunk considerable and about half of the licensed area is now rented to others as storage/baseyard space.

LA 603, as initially issued, allowed for extensions, on a year to year basis, for a maximum of five (5) additional years, provided DHHL was satisfied with the benefits provided by HCDE. While there has been a lack of hiring and using native Hawaiians in its auto sales business because of the previously mentioned challenges, HCDE has helped tremendously with the Kapolei Vocational Training School. Over the past 5 years it has also paid \$630,400 in rent to DHHL and made significant improvements to the property. HCDE now seeks to turn over the License to the nonprofit HCDB so it can generate funds to help finance its home replacement program serving the various Hawaiian Homestead Communities on Oahu. Since the recent article in DHHL's Ka Nuhou about its program, more than twenty (20) families have already approached HCDB seeking assistance.

HCDE and HCDB mutually request that the Hawaiian Homes Commission consent to the assignment (a copy of assignment document and HCDB's corporate resolution is attached hereto for reference) and approve the extension of LA 603 for an additional 5 years. The extension for five years, instead of for one year will help HCDB generate revenue from the licensed area to offset its cost in providing administrative and technical assistance for an additional 17 home replacement projects, as well as complete the 8 projects it committed to under Contract 52388, at no cost to DHHL. A brief synopsis of the home replacement program is attached for review. DHHL will, however, through its HOAP program work with HCDB and provide needed financial counseling to the participating families.

The authority for the Hawaiian Homes Commission to issue licenses is found in Section 207(c)(1), HHCA, 1920, as amended. The procedure to implement this or similar type licenses is

found in Sections 10-4-21 and 10-4-22, DHHL Administrative Rules, 1998, as amended. Further, the recitals in LA 603 state that the license was issued to LICENSEE, its successors and approved assigns and LMD believes that the HHC's consent to the assignment qualifies as said approval.

The same DHHL Rules permit DHHL, subject to the approval of the commission, to negotiate and consummate the rental rate (or license value) of a license, when prudent management does not dictate that the rental rate be established by appraisal.

Chapter 343, Environmental Assessment: The proposed use does not differ from the past use of the subject area. Therefore, pursuant to Section 11-200-8(a)(1), Exempt Classes of Action of the Environmental Impact Statement Rules of the Hawaii Administrative Rules, the action is exempt from the preparation of an environmental assessment. This section exempts "operations, repairs, or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing."

RECOMMENDATION

Land Management Division recommends approval of the requested motion/action as stated.