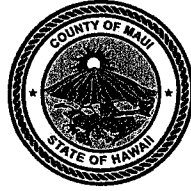


ALAN M. ARAKAWA  
Mayor



RECEIVED

2017 OCT 13 PM 11:11

OFFICE OF THE MAYOR

MARK R. WALKER  
Acting Director

COUNTY OF MAUI  
**DEPARTMENT OF FINANCE**  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793

October 12, 2017

OFFICE OF THE  
COUNTY COUNCIL

2017 OCT 16 AM 9:32

RECEIVED

Honorable Alan M. Arakawa  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Don S. Guzman, Chair  
Parks, Recreation, Energy, and Legal Affairs Committee  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

*Alan Arakawa* 10/13/17  
Mayor Date

Dear Chair Guzman,

**SUBJECT: HAWAIIAN CULTURAL RESTORATION (PRL-26)**

This is in response to your letter dated October 9, 2017 requesting copies of “both the Request for Proposals and resulting contract between the County and Diamond Parking Services as it relates to the parking lot at the Moku’ula Island and Mokuhinia Pond site.”

Attached for your information and use are the two requested documents. At this time the concession agreement has not been formally executed as the vendor’s notary has completed the document incorrectly twice and they now have it for the third time. In this regard the Purchasing Division will continue to hold the vendors bid bond until the agreement is fully and properly executed. The vendor remains in full compliance with the terms of the concession agreement and Finance has collected to date \$60,000.00 in base rent and \$15,317.68 in percentage rent for this concession.

Thank you for the opportunity to provide information regarding this matter and should you have any further questions, please feel free to contact me at Ext. 7474.

Honorable Don S. Guzman, Chair  
Parks, Recreation, Energy, and Legal Affairs Committee  
October 12, 2017  
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark R. Walker', written in a cursive style.

MARK R. WALKER  
Acting Director of Finance

cc: Greg King, Central Purchasing Agent

CONCESSION AGREEMENT NO. M1027

Department. Department of Finance – Purchasing Division  
Project Title. Parking Lot Concession, Lahaina – Corner of Shaw and Front Streets  
TMK: (2) 4-6-007-036  
IFB No. 16-17/P66

THIS LICENSE AND CONCESSION AGREEMENT ("Agreement") is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and DIAMOND PARKING SERVICE, LLC, a Washington limited liability company, whose address is 439 Kamanu Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Concessionaire",

W I T N E S S E T H :

That the County, for and in consideration of the rent to be paid and of the terms, covenants, and conditions set forth in this Agreement, does hereby demise and license unto Concessionaire, and Concessionaire does hereby license and hire from County, for purposes of operating a parking lot concession located at the corner of Shaw and Front Streets, Lahaina, Maui, Hawaii, Tax Map Key No. (2) 4-6-007:036 (the "Premises") as follows:

A. Scope of Concession. The Concessionaire shall, in a proper and satisfactory manner as determined by the County, provide parking lot concession services on a full time basis to the general public 24 hours a day, 7 days a week in accordance with the County's Invitation for Bids Parking Lot Concession, Lahaina – Corner of Shaw and Front Streets, IFB No. 16-17/P66, and Addenda 1 through 4, and any attachments thereto, and Concessionaire's Bid dated March 28, 2017, and any attachments thereto (hereinafter, collectively, "Concession Documents"), which documents are on file in the Director of Finance of the County of Maui, and are incorporated herein by reference and hereby made a part of this Agreement.

CONCESSION AGREEMENT NO M1027

B. Security The Concessionaire shall provide a Performance Bond equal to two (2) months' minimum rental, being Thirty Thousand Dollars (\$30,000.00), as security for the full and faithful performance of the Agreement. Such bond shall by its terms inure to the benefit of the County. Surety bonds for performance must comply with the requirements of Section 102-12, Hawaii Revised Statutes ("HRS").

C. Compensation. As compensation to the County for the right of the Concessionaire to operate the Concession in accordance with the Scope of Work described in paragraph A above, Concessionaire agrees to pay in advance, on the 1<sup>st</sup> day of each and every month, a fixed rental of Fifteen Thousand Dollars (\$15,000.00) or 83.05 percent of the gross monthly revenue of the Concession, whichever is greater, to the County of Maui, Department of Finance, at County's address designated herein or as otherwise designated in writing by County to Concessionaire.

D. Term. The Fixed Term of the Agreement shall commence on July 1, 2017, and shall terminate on December 31, 2017. Beginning January 1, 2018, the Term shall be month-to-month through June 30, 2022, subject to approval by the Maui County Council in its sole and absolute discretion. Either party may terminate this Agreement at any time after January 1, 2018, upon 30 days' written notice to the other Party.

E. Terms and Conditions. The Concessionaire shall comply with the terms and conditions contained within the Invitation for Bids Parking Lot Concession, Lahaina – Corner of Shaw and Front Streets, IFB No. 16-17/P66, and Addenda 1 through 4, and any attachments thereto and the Covenants, Terms, and Conditions of this Agreement, which are attached hereto and made a part hereof.

F. Standards of Conduct Declaration. The Standards of Conduct Declaration of the Concessionaire is attached hereto and is made a part of this Agreement

CONCESSION AGREEMENT NO M1027

G. Conflict In the event of any conflict between or among this Agreement and other documents that are attached hereto or incorporated herein by reference or both, the terms of this Agreement shall control first, the County's General Conditions second, other documents prepared by the County third, and documents prepared or submitted, or both, by the Concessionaire last.

H. Officer-in-Charge The Director of the Finance, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of Agreement requirements, including monitoring, coordinating and assessing Concessionaire's performance and approving completed work/services with verification of same for Concessionaire's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Concessionaire from award to Agreement completion.

IN WITNESS WHEREOF, the Parties execute this Agreement by their signatures. on the dates below, to be effective as of the date of last signature hereto.

[EXECUTION PAGES TO FOLLOW]

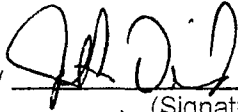
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONCESSION AGREEMENT NO. M1027  
CONCESSIONAIRE'S EXECUTION PAGE

I hereby represent and warrant that I have the legal right and authority to execute this Contract on behalf of the Contractor.

CONCESSIONAIRE:

DIAMOND PARKING SERVICE, LLC

By   
(Signature)

Sumath Dhand  
(Print Name)

Its \_\_\_\_\_  
(Title)

Date 6/19/2017

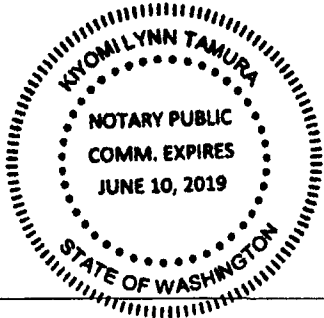
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONCESSION AGREEMENT NO. M1027

STATE OF Washington )  
 ) SS.  
\_\_\_\_\_ )

On this 19 day of June, 2017, before me personally appeared Jon Diamond, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Kiyomi Lynn Tamura  
Notary Public, State of Washington

Print Name: Kiyomi Lynn Tamura

My commission expires: 6/10/2019

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>6/19/2017</u>	# Pages:	<u>9</u>
Notary Name:	<u>Kiyomi Lynn Tamura</u>	Judicial Circuit:	<u>King Co.</u>
Doc Description:	<u>Concession Agreement</u>		
	<u># M 1027</u>		
Notary Signature:	<u>Kiyomi Lynn Tamura</u>		
Date:			



CONCESSION AGREEMENT NO. M1027

COUNTY EXECUTION PAGE

COUNTY OF MAUI

By \_\_\_\_\_  
DANILO F. AGSALOG  
Its Finance Director

Date \_\_\_\_\_

REVIEWED AND APPROVED:

\_\_\_\_\_  
MARK WALKER  
Deputy Director of Finance  
Date \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui  
Date \_\_\_\_\_  
LF2017-0494

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



CONCESSION AGREEMENT NO. M1027

STATE OF HAWAII            )  
   ) SS.  
 COUNTY OF MAUI            )

On this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me appeared DANILO F. AGSALOG, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui, and the said DANILO F. AGSALOG acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

Print Name:

My commission expires.

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	
_____	
_____	
_____	
Notary Signature: _____	
Date: _____	

CONCESSION AGREEMENT NO M1027

CONCESSIONAIRE'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

On behalf of DIAMOND PARKING SERVICE, LLC, Concessionaire, the undersigned does declare as follows:

1. Concessionaire  is  is not a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.
2. Concessionaire has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Agreement within the preceding year and who participated while so employed in the matter with which the Agreement is directly concerned.
3. Concessionaire has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Agreement, if the County Council Member or Employee has been involved in the development or award of the Agreement.
4. Concessionaire has not been represented on matters related to this Agreement, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Agreement.

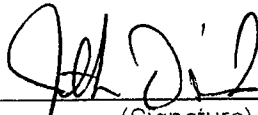
\*Reminder to agency: If the "is" block is checked and if the Agreement involves goods or services of a value in excess of \$500, the Agreement may not be awarded unless the Agreement is made after competitive bidding.

CONCESSION AGREEMENT NO. M1027

Concessionaire understands that the Agreement to which this document is attached is voidable on behalf of the County if this Agreement was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

Concessionaire.

DIAMOND PARKING SERVICE, LLC

By   
(Signature)  
LUKE JONES  
(Print Name)

Its \_\_\_\_\_  
(Title)

Date 6/19/2017

CONCESSION AGREEMENT NO. M1027

COVENANTS, TERMS AND CONDITIONS

CONCESSIONAIRE HEREIN COVENANTS AND AGREES WITH COUNTY AS FOLLOWS:

1. **ACCEPTANCE OF RENT NOT A WAIVER.** No payment by Concessionaire or receipt by County of a lesser amount than the rent required herein shall be deemed to be other than on account of the earliest rent amount due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and County may accept such check or payment without prejudice to County's right to recover the balance of such rent or pursue any other remedy.
2. **TAXES, ASSESSMENTS, ETC.** Concessionaire shall pay or cause to be paid, prior to delinquency, any taxes and assessments, of every description, as to said Premises, or any part thereof, including any improvements thereon, including real property taxes imposed pursuant to Section 3.48.535, Maui County Code; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Concessionaire shall be required to pay only such installments, together with interest, as shall become due and payable during said term. Without limiting the generality of the foregoing, Concessionaires shall also be responsible for the payment of any Hawaii general excise tax (or successor tax) imposed upon the payment of all sums by Concessionaire under this Agreement. Concessionaire shall remain current in payment of all taxes, rents, or other obligations to the United States, the State of Hawaii, or any of its political subdivisions, including the County of Maui.
3. **UTILITY SERVICES.** Concessionaire shall pay, prior to delinquency, all charges for water, sewer, gas, electricity, telephone and other services or utilities used by Concessionaire on the Premises during the term of the Agreement unless otherwise expressly agreed in writing by County.
4. **NO RESIDENTIAL USE.** Concessionaire, its agents, employees and invitees, shall not use the Premises as temporary or permanent residence. Concessionaire shall not permit or allow any person to live on the Premises.
5. **INDEMNIFICATION AND DEFENSE.** Concessionaire shall defend, indemnify and hold harmless the County, the County's department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the Concessionaire or the Concessionaire's employees, officers, agents or subcontractors under this Agreement. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement for any reason.
6. **COST OF LITIGATION.** In case the County shall, without any fault on its part, be made a party to any litigation commenced by or against the Concessionaire in connection with this Agreement, the Concessionaire shall pay any cost and expense incurred by or imposed on the County, including attorneys' fees.
7. **ASSUMPTION OF RISK AND LIABILITY.** Concessionaire, as a material part of the consideration to County for this Agreement, does hereby assume all risk of bodily injury, wrongful death and/or property damage, business interruption or economic loss occasioned by any

## CONCESSION AGREEMENT NO. M1027

accident, fire, or nuisance made or suffered on the Premises, and hereby waives any and all claims against the County. All inventory, property, vehicles, approved improvements and equipment of Concessionaire shall be kept, placed or stored at the sole risk of Concessionaire, and County shall not be responsible or liable for any damage thereto or loss or theft thereof, including subrogation claims by Concessionaire's insurance carriers.

8. **"AS IS" CONDITION.** County has not made and shall not make, any representation or warranty, implied or otherwise, with respect to the condition of the Premises, including but not limited to (a) any express or implied warranty of merchantability or fitness for any particular purpose or (b) any dangerous or defective conditions existing upon the Premises, whether or not such conditions are known to County or reasonably discoverable by Concessionaire. Concessionaire accepts the Premises in a completely "as is" condition, with full assumption of the risks, and consequences of such conditions.
9. **MINERALS AND WATERS.** The County reserves all rights in the following:
  - a. All minerals in, on or under the Premises and the right, on County's own behalf or through persons authorized by it, to prospect for, mine and remove such minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of such minerals by any means whatsoever.
  - b. All surface and ground waters appurtenant to the demised land and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the Premises as may be required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by County of the rights reserved in this paragraph, just compensation shall be paid to Concessionaire for any of Concessionaire's improvements taken.
10. **HISTORIC AND PREHISTORIC REMAINS.** All prehistoric and historic remains found on the Premises shall not be disturbed. Concessionaire agrees to promptly notify the appropriate authorities and cease work until the remains are examined.
11. **TERMINATION.** County reserves the right in its sole discretion to interrupt or cancel operation of the Agreement. The Concessionaire shall bear all expenses or losses in full and shall not take or allow to be taken any action for damages against the County. Should the County determine that a natural disaster or civil defense emergency make it necessary to terminate the Agreement, the Agreement will terminate without any liability to the County. In the case of non-payment of the Agreement compensation, County reserves the right to terminate the Agreement with written notice of the termination and the basis of the termination and shall have the right to remove the Concessionaire, with or without proceedings, 48 hours after the receipt of the notice by the Concessionaire, without any liability to the County or its officials, employees, or agents for damage to or loss of any property belonging to the Concessionaire or to the business of the Concessionaire. The County shall have the right to award the concession to another individual or entity for such time remaining in the term of the Agreement or after the end of the term of the Agreement and to receive the rent therefore, holding the Concessionaire liable for any deficiency in the rent owing under the Agreement.
12. **LIENS.** Concessionaire shall not commit or suffer any act of neglect whereby the Premises, or any part thereof, or the estate of Concessionaire in the same, shall become subject to any attachment, judgment, lien, charge, or encumbrance (hereinafter collectively called "Lien"), whatsoever. In the event that any Lien shall attach to or encumber the Premises, or if an application for a Lien is filed in any court of competent jurisdiction, Concessionaire shall bond

CONCESSION AGREEMENT NO. M1027

against or discharge the same within ten (10) days after written request by County. Concessionaire shall indemnify and hold harmless the County from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom, including attorneys' fees.

13. **RULES AND REGULATIONS.** County excepts and reserves the right, from time to time, to adopt reasonable rules and regulations pertaining to Concessionaire's use of the Premises, which rules and regulations shall be binding upon Concessionaire upon notice thereof to Concessionaire. For enforcement of such rules and regulations, if any, County shall have all remedies in this Agreement and any other remedies allowed by law.
14. **ALTERATIONS AND FIXED IMPROVEMENTS.** Concessionaire shall not at any time during the term alter, construct, place, maintain or install on the Premises any building, structure or improvement of any kind or description except with the prior written approval of County and upon those conditions the County may impose, including any adjustment of rent, unless otherwise provided in this Agreement. County shall retain ownership of all improvements of whatever kind or nature located on the Premises prior to, or on the commencement date of, this Agreement, excluding those improvements, if any, constructed by Concessionaire during the term of this Agreement provided that at the end of this Agreement, any such improvements shall be the property of the County.
15. **REPAIR AND MAINTENANCE.** Concessionaire shall at its own expense at all times during the term of this Agreement, substantially repair and maintain, and keep all improvements now or hereafter built or made on the Premises in good and safe repair, order, and condition, reasonable wear and tear excepted.
16. **SANITATION.** Concessionaire shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition. Concessionaire shall keep and maintain the adjoining areas within a radius of thirty (30) feet in a clean and sanitary manner and shall be responsible for providing a minimum of two (2) garbage and refuse containers within such thirty (30) foot area. Concessionaire shall, at its own cost and expense, engage and supervise competent exterminators to control vermin and pests as often as is necessary. Such extermination services shall be supplied in all areas where food is stored, prepared, or dispensed. The County reserves the right to enter the Premises at all reasonable times, for the purpose of inspecting the Premises. In the event an inspection by the County reveals that the Premises is not used in a safe, sanitary, or otherwise satisfactory operating condition, the Concessionaire, upon being so informed by written notice from the County to correct the condition, shall promptly proceed to correct the condition to the satisfaction of the County. If within five (5) calendar days following the date of the notice, or within additional time as the County may allow, the Concessionaire has not substantially complied with the provisions of such notice, the County shall then have the right to remedy the condition at the expense of the Concessionaire, and the Concessionaire shall promptly reimburse the County for any and all costs incurred thereof.
17. **WASTE AND UNLAWFUL, IMPROPER OR OFFENSIVE USE OF PREMISES.** Concessionaire shall not commit, suffer, or permit to be committed any waste or nuisance, or unlawful, improper or offensive use of the Premises, or any part thereof, nor, without the prior written consent of County, cut down, remove or destroy, or suffer to be cut down, removed and destroyed, any trees now growing on the Premises. Concessionaire shall not allow the Premises to become unduly eroded or subject to any material increase in weeds or litter, and Concessionaire shall make reasonable efforts to prevent or correct same.

CONCESSION AGREEMENT NO. M1027

18. **POLLUTION CONTROL.** If during the performance of this Agreement, the Concessionaire encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the Concessionaire shall immediately notify the County and all other appropriate state, county, or federal agencies as required by law. The Concessionaire shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the County determines that this Agreement requires and adjustment of the time for performance, the Agreement shall be modified in writing accordingly.
19. **RIGHTS OF WAY AND EASEMENTS.** County reserves the right to issue rights of way and easements for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage, and any other purposes whatsoever, without limitation, including the right to enter the Premises to construct, reconstruct, operate and maintain such facilities; provided that all such reserved rights shall be reasonably exercised so as to cause the least practicable interference with Concessionaire's operations; provided further, that, in any such event, any improvements made by Concessionaire damaged as a result of such entry shall be restored to a condition as near as practicable prior to such entry.
20. **ACCESS TO INFORMATION.** Concessionaire shall provide County with reasonable access to Concessionaire's records and information relative to the use of the Premises, as deemed necessary in the judgment of County.
21. **INSURANCE.** During the term of this Agreement, Concessionaire shall maintain at all times or cause to be maintained commercial general liability insurance coverage for Concessionaire and its employees. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the County, with combined single limits of ONE MILLION DOLLARS (\$1,000,000) per occurrence and THREE MILLION DOLLARS (\$3,000,000) in the aggregate, and Fire Insurance in an amount equal to one hundred percent (100%) of the replacement value of the Premises, or such greater amount as may be required from time to time by the County. No such material change or reduction may be made without approval from the County. Prior to the commencement of this Agreement, Concessionaire shall provide the County with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for Concessionaire shall provide the County with certificates of insurance evidencing the foregoing coverage and provisions. The County reserves the right to request and receive a certified copy of the policies. Such certificates of insurance shall name the County as additional insured and shall contain the following statements:

"Should any of the policies described herein be cancelled before the expiration date thereof, notice shall be delivered to the County, Department of Corporation Counsel, Risk Management Division, 200 South High Street, Wailuku, Hawaii 96793, in accordance with policy provisions. This insurance includes coverage for the liability assumed by the insured under the Agreement between the insured and the County of Maui, dated [insert Effective Date]."

"It is agreed that any insurance maintained by the County of Maui will apply in excess of, and not contribute with, insurance provided by this policy."

## CONCESSION AGREEMENT NO. M1027

Concessionaire shall also carry workers' compensation/employer's liability insurance for Concessionaire's employees in the amounts required by applicable law.

Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Agreement and the County shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Agreement.

- 22. CONDEMNATION.** If at any time during the term of this Agreement any portion of the Premises should be condemned or required for public purposes by the State of Hawaii or the United States, Concessionaire shall be entitled to receive from the condemning authority the proportionate value of Concessionaire's permanent improvements so taken in the proportion that it bears to the unexpired term of this Agreement; provided that Concessionaire may, in the alternative, remove and relocate Concessionaire's improvements to the remainder of the Premises occupied by Concessionaire. Concessionaire shall not by reason of the condemnation be entitled to any claim against County for condemnation or indemnity for its interest in this Agreement and all compensation payable or to be paid for or on account of this Agreement by reason of the condemnation, except as aforesaid as to Concessionaire's improvements, shall be payable to and be the sole property of County. Where the portion taken renders the remainder unsuitable for the use or uses authorized under this Agreement, Concessionaire shall have the option to surrender this Agreement and be discharged and relieved from any further liability therefor; provided that Concessionaire may remove the permanent improvements constructed, erected and placed by it within such reasonable period as may be allowed by County. The foregoing right of County shall not be exclusive of any other to which County may be entitled by law.
- 23. COUNTY'S LIEN.** County shall have a lien on all the buildings and improvements placed on the Premises by Concessionaire, on all property kept or used on the Premises, whether the same is exempt from execution or not, and on the Premises, whether the same is exempt from execution or not, and on the rents of all improvements and buildings situated on the Premises for all costs, attorneys' fees, rent reserved, taxes, and assessments paid by County on behalf of Concessionaire and for the payment of all money as provided in this Agreement to be paid by Concessionaire, and such lien shall continue until the amounts are paid.
- 24. ASSIGNMENT AND HYPOTHECATION.** Concessionaire shall not transfer, assign, sublet, mortgage or permit any other person to occupy or use the Premises or any portion thereof, or transfer, hypothecate, or assign this Agreement or any interest therein, voluntarily or by operation of law, without the prior written approval of the Director of Finance, and any transfer or assignment so made in violation of this provision shall be null and void.
- 25. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.**
- a. The Concessionaire is deemed to be an "independent contractor." The Concessionaire and the Concessionaire's employees and agents are not by reason of this Agreement, agents, employees or joint venture of or with the County for any purpose, and the Concessionaire and the Concessionaire's employees and agents shall not be entitled to claim or receive from the County any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the County employees.
  - b. The Concessionaire intentionally, voluntarily, and knowingly assumes the sole and entire liability to the Concessionaire's employees and agents, and to any individual not a party to this Agreement, for all loss, damage, or injury caused by the Concessionaire, or the Concessionaire's employees or agents in the course of their employment.
  - c. The Concessionaire shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the Concessionaire by reason of



## CONCESSION AGREEMENT NO. M1027

- this Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the Concessionaire also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Agreement.
- d. The Concessionaire shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, HRS, and shall comply with all requirements thereof. The Concessionaire shall obtain a tax clearance certificate with all requirements thereof. The Concessionaire shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the Concessionaire have been paid and submit the same to the County prior to the commencement of this Agreement.
  - e. The Concessionaire is responsible for securing all employee-related insurance coverage for the Concessionaire and the Concessionaire's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.
  - f. The Concessionaire shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, HAR, that is current within six months of the date of issuance.
  - g. The Concessionaire shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
  - h. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the Concessionaire may submit proof of compliance through the State Procurement Office's designated certification process.
- 26. SURRENDER OF PREMISES.** At the expiration, revocation, cancellation or termination of this Agreement, Concessionaire shall peaceably surrender the Premises, together with all improvements existing or constructed thereon, unless provided otherwise. On or before the last day of the term or the sooner termination thereof, Concessionaire, if not then in default, shall remove all trade fixtures, operating equipment and other personal property of Concessionaire from the Premises and repair any damage occasioned by any such removal. Property not so removed shall be deemed abandoned by Concessionaire.
- 27. TERMINATION.** If Concessionaire becomes bankrupt, dissolves, becomes inactive, or abandons the Premises for a period of four (4) consecutive months, or if this Agreement and the Premises shall be attached or otherwise taken by operation of law, or if any assignment be made of Concessionaire's property for the benefit of creditors, or shall fail to observe and perform any of the covenants, obligations, rules, regulations, provisions, terms and conditions, and such failure shall continue for a period of more than thirty (30) days after delivery by County of a written notice of such breach or default, by personal service, registered mail or certified mail to Concessionaire at Concessionaire's last known address, all rights granted hereunder to Concessionaire shall cease and this Agreement shall terminate without prejudice to any other remedy or right of action for arrears of rent or damages or for any preceding or other breach or Agreement; and in the event of such termination, all buildings and improvements there on shall remain and become the property of County, subject to any valid mortgages against the property.
- 28. COVENANT AGAINST DISCRIMINATION.** The use and enjoyment of the Premises shall not be in support of any policy which discriminates against anyone based upon race, sex, sexual orientation, age, religion, color, ancestry, national origin, disability, marital status, arrest and court record, assignment of income for child support obligations and National Guard participation.

CONCESSION AGREEMENT NO. M1027

29. **ADA COMPLIANCE.** County makes no representations or warranties, express or implied, as to the Premises or any existing improvements thereon, regarding compliance with the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§12101-12213 (2000). Concessionaire shall be responsible for complying with the ADA and Concessionaire shall defend, indemnify and hold harmless County against any and all claims regarding non-compliance with any requirement of the ADA. All costs relating to any required improvements or modifications to the Premises, and any existing improvements thereon, shall be borne by Concessionaire. Notwithstanding any other provision of this Agreement to the contrary, any improvements to the Premises constructed by Concessionaire shall be in compliance with the ADA.
30. **COMPLIANCE WITH LAWS.** Concessionaire shall comply with all federal, state, and county laws pertaining to the Premises and activities conducted on the Premises, now in force or which may hereinafter be in force.
31. **GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.
32. **GENDER.** The use of any gender shall include all genders, and if there be more than one Concessionaire or County, then all words used in the singular shall extend to and include the plural.
33. **PARAGRAPH HEADINGS.** The paragraph headings throughout this Agreement are for the convenience of County and Concessionaire and are not intended to construe the intent or meaning of any of the provisions thereof.
34. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement and all of the terms, provisions, covenants, and conditions hereof.
35. **NOTICES.** Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

Procurement Officer  
Department of Finance  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Notice to the Concessionaire shall be sent to the Concessionaire's address as indicated in this Agreement. 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 Concessionaire is responsible for notifying the County in writing of any change of address.

36. **ASSISTANCE OF LEGAL COUNSEL.** The Parties represent and certify to each other that they have been advised to seek the advice of legal counsel and have done so. The Parties have carefully read and fully understand all of the provisions of this Agreement, and have thoroughly discussed all aspects of this Agreement with their respective counsel. The parties are voluntarily entering into this Agreement and no party or its agents, representatives, or attorneys have made

## CONCESSION AGREEMENT NO. M1027

any representations concerning the terms or effects of this Agreement other than those contained herein.

37. **DRAFTING.** No provision of this Agreement shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.
38. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
39. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Agreement.
40. **SEVERABILITY.** In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
41. **WAIVER.** The failure of the County to insist upon the strict compliance with any term, provision, or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of the County's right to enforce the same in accordance with this Agreement. The fact that the County specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the County's rights or the Concessionaire's obligations under the law.
42. **ENTIRE AGREEMENT.** This Agreement sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the County and the Concessionaire relative to this Agreement. This Agreement supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the County and the Concessionaire other than as set forth or as referred to herein.

**END OF COVENANTS, TERMS AND CONDITIONS**

CONCESSION AGREEMENT NO. M1027

PERFORMANCE BOND WITH SURETY

BOND NO. 52BSBHL9172

**KNOW TO ALL BY THESE PRESENTS:**

That DIAMOND PARKING SERVICE, LLC, a Washington limited liability company, whose address is 439 Kamani Street, Honolulu, Hawaii 96813, as Concessionaire, hereinafter called "Principal," and Hartford Fire Insurance Company as surety, whose mailing address is PO Box 3018, Bothell, WA 98041-3018, hereinafter called "Surety," a corporation authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the COUNTY OF MAUI, a political subdivision of the State of Hawaii, Wailuku, Maui, Hawaii, its successors and assigns, hereinafter called "Obligee," in the amount of \$30,000.00 as performance bond, lawful money of the United States, for the payment of which to the said Obligee, well and truly made, Principal and Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**WHEREAS**, the above-bound Principal has signed an Agreement with Obligee dated 7/1/2017, for a license and concession described in that Invitation for Bids Parking Lot Concession, Lahaina – Corner of Shaw and Front Streets, IFB No. 16-17/P66, and Addenda 1 through 4, hereinafter called "Agreement," which Agreement is incorporated herein by reference and made a part hereof.

**NOW THEREFORE**, the condition of this obligation is such that:

If the Principal shall promptly and faithfully perform, and fully complete the Agreement in strict accordance with the terms of the Agreement as said Agreement may be modified or amended from time to time; then this obligation shall be void; otherwise to remain in full force and effect.

CONCESSION AGREEMENT NO. M1027

Surety to this bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the Agreement, including the work to be performed thereunder, and the specifications or drawings accompanying same, shall in any way affect its obligation on this bond, and the Surety does hereby waive notice of any change, extension of time, alteration or addition to the terms of the Agreement or the work performed. The Surety agrees that modifications and changes to the terms and conditions of the Agreement that increase the total amount to be paid the Principal shall automatically increase the obligation of the Surety on this bond and notice to Surety is not required for such increased obligation.

In the event of Default by the Principal, of the obligations under the Agreement, then after written Notice of Default from the Oblige to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, or take over the work to be performed under the Contract and complete such work, or pay moneys to the Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this 1st day of July, 2017.

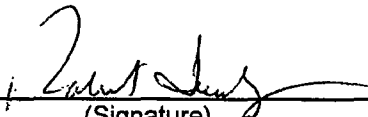
**[EXECUTION PAGES TO FOLLOW]**

**[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]**

CONCESSION AGREEMENT NO. M1027

PRINCIPAL:

DIAMOND PARKING SERVICE, LLC

By   
(Signature)  
Robert Tudy  
(Print Name)  
Its CFO / Secretary  
(Title)  
Date 7/1/2017

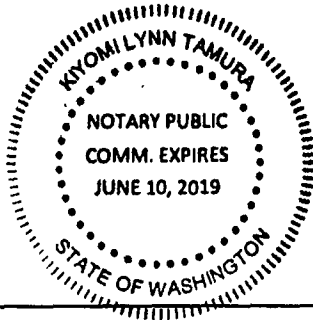
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

CONCESSION AGREEMENT NO. M1027

STATE OF Washington )  
King County ) SS.

On this 1st day of July, 2017, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Kiyomi Lynn Tamura  
Notary Public, State of Washington

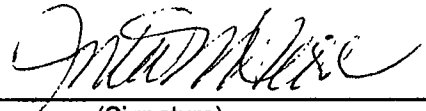
Print Name: Kiyomi Lynn Tamura

My commission expires: 6/10/2019

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>7/1/2017</u>	# Pages:	<u>7</u>
Notary Name:	<u>Kiyomi Lynn Tamura</u>	Judicial Circuit:	
Doc. Description:	<u>Performance Bond with Surety</u>		
Notary Signature:	<u>Kiyomi Lynn Tamura</u>		
Date:	<u>7/1/2017</u>		

CONCESSION AGREEMENT NO. M1027

SURETY:

By   
(Signature)  
Julie M. Glover  
(Print Name)  
Its Attorney-in-Fact  
(Title)  
Date 7/1/2017

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]



CONCESSION AGREEMENT NO. M1027

STATE OF WA )  
 ) SS.  
King )

On this 1st day of July, 2017, before me personally appeared Julie M. Glover, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Patricia Ann White  
Notary Public, State of WA

PATRICIA ANN WHITE  
Notary Public, State of Washington  
My Commission Expires  
June 15, 2018

Print Name: Patricia Ann White

My commission expires: 6/15/2018

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>7/1/2017</u>	# Pages:	<u>7</u>
Notary Name:	<u>Patricia Ann White</u>	Judicial Circuit:	<u>King County, WA</u>
Doc. Description:	<u>Performance Bond with Surety</u>		
<div data-bbox="1055 1239 1477 1375" data-label="Text"> <p>PATRICIA ANN WHITE Notary Public, State of Washington My Commission Expires June 15, 2018</p> </div>			
Notary Signature:	<u>Patricia Ann White</u>		
Date:	<u>7/1/2017</u>		

**INVITATION FOR BIDS**

**FOR THE**

**PARKING LOT OPERATION CONCESSION**

**AT FRONT AND SHAW STREETS IN LAHAINA, MAUI**

**TMK: 2-4-6-07**

**IFB No. 16-17/P66**

## INVITATION TO BIDDERS

### IFB No. 16-17/P66

Sealed bids for the Parking Lot Concession at the northeastern quadrant of Front and Shaw Streets in Lahaina, Maui, TMK 2-4-6-07, IFB 16-17/P66, will be received up to 2:00 p.m. on

**March 22, 2017**

and publicly opened thereafter at the Department of Finance, Purchasing Division, 2145 Wells Street Suite 104 (Wells Street Professional Building), Wailuku, HI. 96793.

The concession will be awarded for a two (2) year period beginning **July 1, 2017 and ending June 30, 2019**, with three (3) ea. one year potential extension options.

The concession will be awarded through a multiple step competitive sealed bid process. The first phase will consist of a bidder's qualification process. The deadline for submission of unpriced qualification offers is **February 28, 2017 at 4:00 p.m.** This submission will not be opened publicly. This submission will also fulfill the Notification of Intention to Bid requirement. Bidders who meet the minimum qualifications will be allowed to proceed to the second phase - the submission of priced sealed bids, with the bid opening on **March 22, 2017** as stated above.

Through registration, the Request for Proposal document may be obtained from the above named office via Public Purchase (<http://www.publicpurchase.com/gems/mauico.hi/buyer/public/publicInfo>), an eprocurement system

No bid will be accepted unless accompanied bid security in accordance with 102-6, Hawaii Revised Statutes.



DANILO F. AGSALOG  
Director of Finance

Maui News: **February 12, 14, 16, 2017**

**OFFER FORM**

**IFB NO. 16-17/P66**

Director of Finance  
County of Maui  
Wailuku, Maui, HI. 96793

Dear Sir:

The undersigned bidder declares and certifies that he has thoroughly examined and is familiar with the Invitation to Bidders and the Specifications for the Parking Lot concession at the northeastern quadrant of Front and Shaw Streets, Lahaina, HI, TMK 2-4-6-07, and that this proposal is made without collusion with any other person, firm or corporation. The undersigned further declares that he has read and fully understands the Disclaimer section of the specifications and has factored these uncertainties into the bid.

The undersigned bidder bids a fixed rental of **\$20,000** per month, or \_\_\_\_\_ percent of the gross, the greater thereof per month. Award will be made to the bidder offering the highest percentage of the gross.

It is understood that the bid upset amount is **\$20,000.00** per month, and that all bids that do not meet this minimum will be automatically rejected.

Upon acceptance of this proposal by the Director of Finance, and the award by the Director of Finance, the undersigned agrees to enter into and execute the contract agreement and furnish a bond as required within ten (10) days after such notice of award or within such further time as the Director of Finance may allow.

If the undersigned fails to enter into and execute the contract agreement and furnish a bond as required by law within ten (10) days after notice of such award or within such further time as the Director of Finance may allow, the Director of Finance may determine that the bidder has abandoned the contract and there-upon forfeiture of the security accompanying this proposal shall operate and the same become the property of the County of Maui.

Attached please find:

- ( ) Cash
- ( ) Certificate of Deposit
- ( ) Cashier's Check
- ( ) Certified Check
- ( ) Surety Bond

as required by the Specifications.

Respectfully submitted,

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Bidder\*\*

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Print of Type Name of Bidder

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Print or Type Title of Bidder

\_\_\_\_\_  
Date Signed

Hawaii State General Excise Tax License Number:

Please specify type of organization:

Individual \_\_\_\_\_ Partnership \_\_\_\_\_ Corporation \_\_\_\_\_

State of Incorporation:

Hawaii \_\_\_\_\_ Other \_\_\_\_\_ Please Specify \_\_\_\_\_

\*\* If corporation, please attach to this page your corporate seal, and also evidence of the authority of this officer to submit a bid on behalf of the corporation. Such authority must be in the form of a corporate resolution. Give also the names and addresses of the other officers of the corporation.

## SPECIFICATIONS

### IFB NO. 16-17/P66

#### I. Multiple Sealed Bid Process/ Bid Preparation

This Parking lot concession is for the parking lot located at the northeastern intersection of Front and Shaw Streets in Lahaina, HI., TMK 2-4-6-07, and it will be awarded through a multiple step competitive sealed bid process. The first phase will consist of a bidder's qualification process. Prospective bidders will submit proposals which describe their qualifications to operate and manage the parking lot concession as described in the Qualifications Section of this Specification and based on the specifications of this IFB. The proposals will be evaluated by a committee selected by the Director of Finance based on the Evaluation Criteria listed in the Evaluation section of this Specification. The deadline for submission of un-priced qualification offers is **February 28, 2017 at 4:00 p.m.** This submission will not be opened publicly, and will not be available for public inspection until after award of the contract. This submission will also fulfill the Notification of Intention to Bid requirement.

Bidders who meet the minimum qualifications as determined by the Director of Finance shall be allowed to proceed to the second phase - the submission of priced sealed bids, with the bid opening to be held on **March 22, 2017 at 2:00 p.m.** at the County of Maui Purchasing Division, 2145 Wells Street Suite 104 (Wells Street Professional Building), Wailuku, HI. 96793. Both qualified and disqualified bidders will be notified with prior to the bid opening by the Director of Finance. The sealed price offers may be submitted at the same time as the qualification submission as long as they are in a separate, sealed, clearly marked envelope (provided by the County of Maui Purchasing Division). **The qualified bidder submitting the highest % of the gross will be awarded the contract.**

All associated costs for preparing the proposals shall be borne by the contractor and are not the responsibility of the County of Maui.

Please submit your qualifications as directed in a neat and readable manner. If the space provided is insufficient for a particular response, please attach supplemental sheets which clearly refer back to the IFB. If there is any additional literature or information that you would like to provide that is not relevant to a specific IFB response, please put in a last section marked "Additional Information".

Where a contractor cannot comply with an express provision of the specifications, terms and conditions, or any other part of this IFB, the bidder shall furnish a statement on company letterhead giving a complete description of the exception. Failure to furnish this statement will mean that the bidder agrees to meet all requirements of the terms,

conditions, and specifications. The Director of Finance shall be the sole determinant of the acceptability of any exceptions, or of any alternatives proposed. No withdrawal of the IFB shall be allowed after the 1st phase submission deadline.

Contractors shall immediately notify **Greg King @ (808) 270-7488** if any ambiguities, conflicts, discrepancies, omissions, or other errors in this IFB are discovered. Any other questions regarding this IFB should be addressed to **Greg King at (808) 270-7488 or by email to greg.king@co.maui.hi.us.**

## **II. Evaluation**

Phase I offers will be evaluated in accordance with the following evaluation criteria, based on the qualification information submitted in response to the Contractor Qualification section of this Specification:

### Evaluation Criteria (listed in the order of relative importance)

1. Parking Lot Business Experience/Capability.
3. Financial Capability
4. Compliance with the Specifications.
5. Contract start-up compliance.

The first step in the phase 1 evaluation process is for the committee to review each proposal to determine whether it is either acceptable or unacceptable. A 100 point evaluation system will be used, and the bidders that score 70 points or greater will be considered acceptable, and allowed to proceed to the second phase. During this phase, discussions may be held with bidders to clarify their responses.

The Director of the Finance reserves the right to withhold award of a contract for a period of thirty (30) calendar days from the date of the IFB Phase II bid opening.

The Director of the Finance reserves the right to accept or reject any or all IFB's and to waive any minor or inadvertent discrepancy in the IFB documents.

## **III. Contractor Qualification**

Provide your responses to the information asked below. Additional information not asked for can be included in a separate appendix of your proposal.

### 1. Contractor Profile

Describe your organization type (corporation, partnership, etc.). If your organization is a subsidiary to another organization, please explain the appropriate relationships, etc. Describe the history of your organization, the size of your organization, the scope of your business operations, the geographical

areas in which the firm operates, etc. Please attach an annual report and/or audited financial statements.

Provide resumes or background information for the appropriate personnel who would manage and operate the concession. Resumes should include a description of projects which are similar to the Scope of Services contained herein. Provide the addresses and phone/fax numbers of all key individuals.

## 2. Experience

Describe your company's relevant experience in performing the scope of services contained herein. Please focus on businesses or concessions of similar size or complexity. Also please include any relevant experience of the key individual(s) who will be operating the concession. Please provide references for all of this information which includes current names and telephone numbers.

All bidders, whether operating as individuals, a partnership, or a corporation, shall be currently actively managing a minimum of five (5) parking lots, each with a minimum of fifty (50) parking spaces in the State of Hawaii.

## 3. Financial Capability

Please describe your firm's current financial capability to perform, including the amount of working capital that you would provide based on the scope of services. Include audited financial statements of related businesses which are listed in the Experience Section of your proposal.

The Director of Finance reserves the right to investigate the financial status, experience, and records of each bidder; and to require additional evidence and information from any bidder. The Director of Finance shall be the sole determinant as to whether a particular bidder is qualified to proceed to Phase 2, or the sealed price offer phase of the IFB.

## 4. Contract Start up date

Please describe in detail how your firm, if selected, would comply with the **July 1, 2017** startup date based on a projected award date of **May 1, 2017**.

## IV. Scope of Concession

The concessionaire shall provide parking lot concession services as defined herein on a full time basis to the general public without discrimination as to race, color, creed, or in any other way whatsoever.

The concessionaire will operate the concession 24 hours a day, 7 days a week.



The concessionaire will operate the concession on an as is basis. The County of Maui will not provide any improvements, signage, striping, or any other Capital Improvements. The concessionaire will not change the access, or the existing parking configuration or number of spaces in the lot without advanced approval from the County of Maui Officer in Charge.

The concessionaire will not be responsible for any ordinary wear and tear, but the County of Maui will not pay for items such as restriping faded striping if it effects the revenue potential of the concessionaire.

The concessionaire will keep the lot in a neat, clean, and safe condition.

The County of Maui Parks Department will provide any tree trimming services required on the property. Contractor is required to give the County of Maui sufficient advanced notice of any tree trimming needs.

The County of Maui Parks Department will maintain the parking lot lights. The concessionaire will promptly report any lighting outages to the County of Maui Parks Department.

The concessionaire will provide electronic pay boxes that record all payment activity. The concessionaire will provide all payment information upon request to the Director of Finance to verify revenue sharing activity. Exhibit "A" shows the electrical infrastructure in the vicinity. The concessionaire is responsible for paying for any electrical infrastructure improvements required to operate the electronic pay boxes. The County of Maui will pay for the electrical operating expenses, including for the existing overhead lights.

The concessionaire will not be able to install new signage, pay boxes, or any other fixtures in advance of the July 1, 2017 occupy date. The concessionaire will be responsible for removing any unwanted remaining signage that remains after June 30, 2017.

## **V. Disclaimer**

The County of Maui makes no guaranties, representations or warranties regarding revenue or net income to be derived from the concession by the concessionaire.

The County shall not be liable or responsible for any loss of concession revenue or net income due to causes or events without the fault or negligence of the County. Such causes and events shall include, but not be limited to, strikes, lockouts, acts of god, acts of government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, and storms or other weather related conditions.

## VI. Other Provisions

### 1. Governing Laws

This IFB shall be bid in accordance with Chapters 102, 103, and 103D Hawaii Revised Statutes, and corresponding Hawaii Administrative Rules.

### 2. Bid Deposit

All bid proposals must conform to Hawaii Revised Statutes, Section 102-6, and must be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check, or certified check on a bank that is insured by the Federal Deposit Insurance Corporation in the amount of \$2,500.00 plus 2% of the amount of the total lease rent exceeding \$50,000.00. For this concession, the bid deposit will be \$11,100 (calculated as  $(\$20,000.00/\text{mo} \times 24 \text{ months}) = \$480,000.00$ .  $\$480,000.00 - \text{first } \$50,000 = \$430,000.00 \times .02 = \$8,600.00 + \$2500 \text{ (on first } \$50,000.) = \$11,100$ ). The bid deposit must be payable at sight to the Director, or by a surety bond approved by the Director in a penal sum of equal amount.

The aforementioned surety bond shall conform to the Hawaii Revised Statutes, Section 102-8, and be executed to the Director as obligee, by the bidder as principal, and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State, if a foreign corporation; and under the laws of the State, if a Hawaii corporation, as a surety in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten (10) days after the award or within such further time as the Director may allow.

If the bidder to whom the contract for the concession is awarded fails or neglects to enter into the contract and/or furnish satisfactory security as required by Hawaii Revised Statutes, Section 102-11 and Section 102-12, within ten (10) days after the award, the Director shall pay the amount of the deposit into the County Treasury.

The proposal guarantee of all bidders shall be returned after the execution of the contract by the successful bidder, or if no contract is entered into, after the expiration of sixty (60) days after the opening of the bids or after the Director publishes another call for bids, whichever is sooner.

### 3. Upset Price:

Any bids less than the upset price of **Twenty thousand dollars (\$20,000.00) per month** shall not be considered.

4. Execution of the Contract:

The successful bidder, hereinafter referred to as the "concessionaire," shall within ten (10) days after the award of the contract, or within such further time as the Director of Finance may allow, enter into and execute a Lease and Concession Agreement with the County of Maui for the lease of the Parking lot concession for a period of **two (2) years**.

The County of Maui reserves the right to cancel the award of any contract at any time prior to the signing of the Lease and Concession Agreement.

5. No Discrimination:

During the performance of this contract, concessionaire shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin; likewise, for treatment of the employee during his employment. Notice setting forth the provisions of the nondiscrimination clause shall be posted in conspicuous places by the concessionaire. Noncompliance shall constitute a breach of contract and/or declaration of ineligibility on future contracts with the County of Maui.

6. Performance Bond:

At the signing of the Lease and Concession Agreement, the concessionaire shall deposit with the Director of Finance legal tender, or a certified or cashier's check, or a surety bond in an amount equal to two (2) months minimum rental, or \$40,000.00, as security for the full and faithful performance of the Lease and Concession Agreement by the concessionaire.

7. Alterations or Improvements

The concessionaire shall not make any permanent alterations or improvements to the concession area without obtaining prior written consent of the Officer in Charge. Requests to make any permanent alterations or improvements shall be in writing. It shall be accompanied by plans and specifications of the proposed project, including cost estimates thereof. All alterations and improvements shall be made at the expense of, and maintained by the concessionaire.

8. Utilities, Taxes, and Other Charges:

The concessionaire shall pay for all taxes, including real property taxes, and other charges incurred or assessed against the operation of the concession herein granted, including but not limited to the full cost of any telephone, water, and refuse collection and refuse charges. The

concessionaire will not be responsible for paying for electricity. The concessionaire shall defend, indemnify, and hold harmless the County of Maui from and against any and all claims, losses, or causes of action relating to such utilities, taxes, and other charges. Prior to being awarded a contract, the concessionaire shall provide a State of Hawaii tax clearance and an affidavit certifying that the concessionaire owes no taxes, or money, or has any unfulfilled contractual obligations to any Federal, State, or County government agency.

9. Compliance with Laws

The concessionaire shall observe and comply with all laws, statutes, ordinances, and rules and regulations of the United States of America, the State of Hawaii, the County of Maui, and any department or agency of the above. Whenever his rental equipment and/or personnel are involved, the concessionaire shall also be responsible in the enforcement of such laws, statutes, ordinances, and rules and regulations.

10. Equipment:

The concessionaire shall furnish and install at his own expense any equipment, materials, furniture, supplies, etc., required by him for the proper operation of the concession and in order to meet our auditing requirements. All placement and installation shall be made only upon written approval of the Officer in Charge.

11. Hours of Operation:

The concessionaire shall open and operate said concession 24 hours a day, 7 days a week.

12. Concession Payment:

Payment shall be made on the first day of each month to the Director of Finance. Checks shall be made payable to the Director of Finance. Delinquency of concession payments extending beyond a three month period from the first due date shall constitute a breach of the Agreement, and shall be grounds for termination of the Agreement by the County of Maui. Monthly interest of 1/2% per month will be charged on any balance due over 30 days.

13. Subletting and Assignments:

The concessionaire shall not sublet or license the whole or any part of the premises; nor assign, hypothecate, or mortgage the lease and concession

agreement, or any or all of its rights there under, without the prior written approval of the County of Maui.

14. Indemnity:

The concessionaire shall so conduct his activities upon the premises so as not to endanger any person lawfully thereon; and shall defend, indemnify, save, and hold harmless the County of Maui and all of its officers, agents, and employees from any and all claims for losses, injuries, damages, and liabilities to persons or property occasioned wholly or in part by the acts or omissions of the concessionaire, his agents, officers, employees, guests, patrons, or any person or persons admitted to said premises, which said premises are used by or under the control of the concessionaire.

15. Insurance:

Liability Insurance. Concessionaire shall procure, at its own cost and expense, and maintain during the entire period of this agreement, a policy or policies of comprehensive liability insurance, in an amount of at least TWO MILLION AND NO/100 DOLLARS (\$2,000,000.00), against all claims for personal injury and/or death, and in an amount of at least ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) for property damage. The policy or policies shall cover the entire premises, including all buildings, improvements and grounds and all roadways or sidewalks on or adjacent to the premises in the control or use of the Concessionaire. Concessionaire shall furnish County with a certificate showing the policy to be initially in force and shall furnish a like certificate upon each renewal of the policy. The procuring of this policy shall not release or relive Concessionaire of Concessionaire's responsibilities under this Agreement or limit the amount of its liability under this Agreement. A notice of intent to cancel shall be sent to County of Maui, its Agents, Officers and Employees thirty (30) days prior to the date of cancellation. Insurance policies shall name County as additional insureds.

Fire Insurance. Concessionaire shall procure, at its own cost and expense, and maintain during the entire period of this Agreement, a policy or policies of fire insurance, on all building and improvements on the Premises, against loss or damage by fire in an amount equal to one hundred percent (100%) of the replacement value of the Premises as established by the insurance appraiser and as approved by the Director of Finance, and shall pay the premiums thereon at the time and place the same are payable. The policy or policies of insurance shall be made payable in case of loss to County and Concessionaire, as their interests may appear and shall be deposited with County. Any proceeds derived therefrom in the event of total or partial loss shall be immediately available to, and as soon as reasonably possible be used by, Concessionaire for rebuilding, repairing, or otherwise

reinstating the same buildings in a good and substantial manner according to the plans and specifications approved in writing by County; provided, however, that with the approval of County, Concessionaire may surrender this Agreement and Concessionaire shall then receive that portion of said proceeds which constitute the proportionate value of permanent improvements made by Concessionaire, if any, in the proportion which the unexpired term of this Agreement at the time of said loss bears to the estimated useful life of said improvements, County to retain the balance of said proceeds.

Concessionaire shall furnish to County a certificate showing such policy or policies to be initially in force and shall furnish a like certificate upon each renewal of such policy or policies, each such certificate to contain or be accompanied by an assurance of the insurer to notify County of any intention to cancel any such policy or policies, thirty (30) days prior to an actual cancellation. Insurance policies shall name County as an additional insured.

16. Breach of Contract:

In the event of any breach of any of the terms or provisions of the Lease and Concession Agreement, or failure for any reason on the part of the concessionaire to perform under the terms and conditions of the Agreement, the County of Maui shall have, in addition to any other recourse, the right to terminate the Agreement; to enter and obtain possession of the entire premises, to hold as security or remove and exclude all property of the concessionaire there from, to remove and exclude any and all persons from the premises, to assume full control and management of the administration and operations of the golf course, and/or to substitute a suitable operator of the golf course for the duration of this contract, all without service of notice or resort to legal process and without any legal liability on its part. In the event of a breach of contract by the concessionaire the County of Maui shall be under no duty to mitigate its damages caused by said breach.

17. Inspection by the County of Maui

The County of Maui shall have the right to make inspections at any reasonable time and in any reasonable manner to insure compliance with the Lease and Concession Agreement.

18. Surrender of Premises Upon Termination:

The concessionaire shall, upon demand and without court order, peaceably deliver forthwith possession and control to the County of Maui of the demised premises, including all improvements or additions thereto,

in good order and condition, reasonable wear and tear excepted, upon the termination of the Lease and Concession Agreement.

19. Term of Agreement:

The term of this contract will be from **July 1, 2017 to June 30, 2019** unless otherwise terminated sooner as set forth herein. In addition, this contract will allow for a potential three one (1) year extensions from **July 1, 2019 to June 30, 2022** upon mutual agreement of the contractor and the County.

20. Severability:

If any term or provision of this contract is held invalid, the other terms or provisions shall be not affected thereby. If the application of the contract, or any of its provisions, to any persons or circumstances is held invalid, the application of the contract and its provisions to other persons or circumstances shall not be affected thereby.

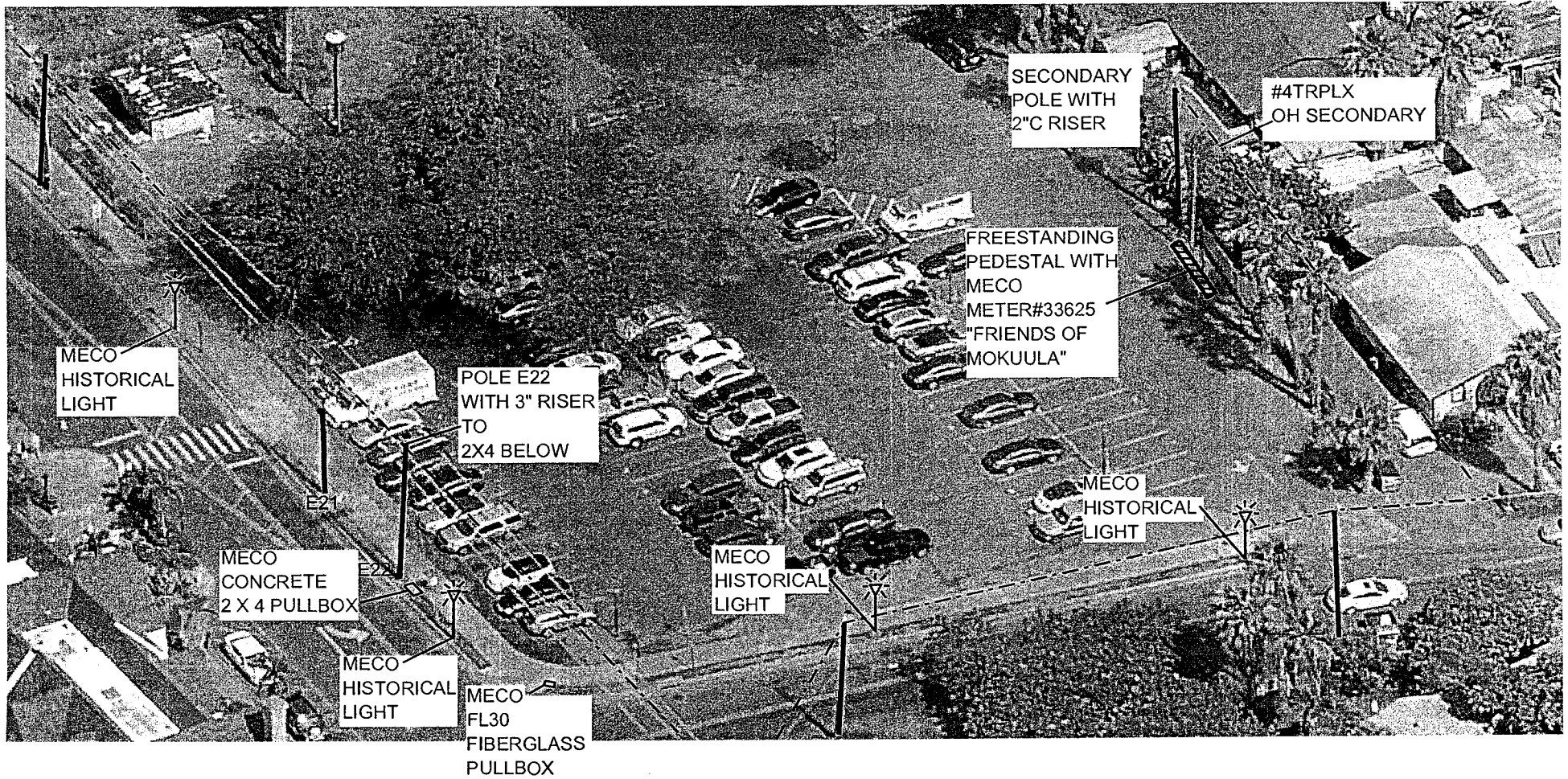
21. Hawaii Compliance Express (HCE). In accordance with Section 3-122-112, as amended, of the Hawaii Administrative Rules, the successful bidder must produce the following documents:

- a. Tax Clearance Certificate
- b. DLIR Certificate of Compliance
- c. Certificate of Good Standing from the DCCA

The awarded vendor is encouraged to use the Hawaii Compliance Express website to assist them in obtaining the above certificates. The state website is <http://vendors.ehawaii.gov>.

22. Final Payment Tax Clearance. The tax clearance submitted with your invoice for final payment requires both the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service approvals. A copy of a tax clearance certificate that bears an original green certified copy stamp shall be acceptable for final payment. The period of validity for a tax clearance used for final payment is two (2) months.

EXHIBIT "A"






**ADDENDUM #1**  
PARKING LOT OPERATION CONCESSION  
AT FRONT AND SHAW STREETS IN LAHAINA, MAUI  
**IFB NO. 16-17/P-66**

This addendum is hereby made a part of IFB 16-17/P-66, and it shall amend the said document in the following respect:

ADD Exhibit "A"

Approval:   
DANILO F. AGSALOG  
Director of Finance  
County of Maui

Issued: February 13, 2017

RECEIPT

Receipt is acknowledged for Addendum No. 1 of the solicitation entitled "Parking Lot Operation Concession", IFB 16-17/P-66.

Please acknowledge receipt of this addendum by either mailing this receipt page to the Department of Finance, Purchasing Division, 2145 Wells St. Suite 104, Wailuku, Hawaii 96793 or by emailing to [jared.masuda@co.maui.hi.us](mailto:jared.masuda@co.maui.hi.us).

Received by:

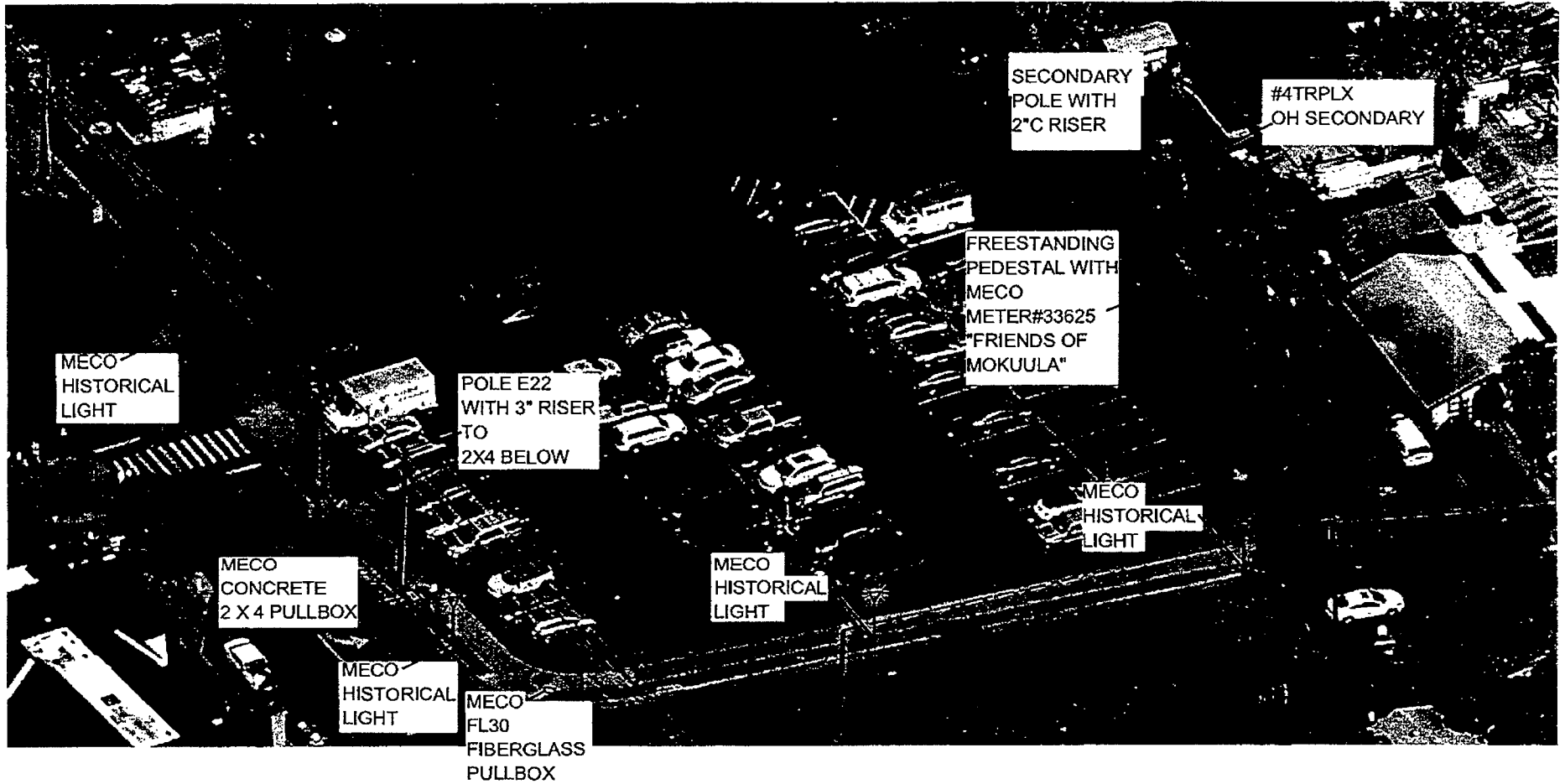
\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
NAME OF FIRM

\_\_\_\_\_  
ADDRESS OF FIRM

\_\_\_\_\_  
DATE RECEIVED

EXHIBIT "A"



**Addendum # 2**

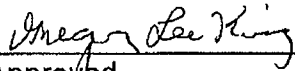
Parking Lot Operation Concession  
At Front and Shaw Streets in Lahaina, Maui

IFB No. 16-17/P66

This addendum is hereby made a part of IFB 16-17/P66, and it shall amend the said document in the following respect:

The deadline date for the submission of the unpriced qualification offer has been extended from February 28, 2017 to **March 15, 2017 at 4:00 p.m.**

The deadline date for the submission of the priced sealed bid will be extended from March 22, 2017 to **March 29, 2017 at 2:00 p.m.**

For   
\_\_\_\_\_  
Approved  
DANILO F. AGSALOG  
Director of Finance

RECEIPT

Receipt is acknowledged of Addendum #1 for:

**Parking Lot Operation Concession at Front and Shaw Streets in Lahaina, Maui.**

Please acknowledge receipt of this addendum by either mailing this receipt page to the County of Maui Purchasing Division, 2145 Wells Street, Suite 104, Wailuku, HI. 96793 or by faxing to (808) 270-8295.

Received by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Date Received

**Addendum # 3**  
Parking Lot Operation Concession  
At Front and Shaw Streets in Lahaina, Maui

IFB No. 16-17/P66

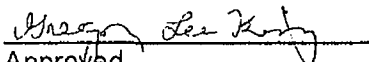
This addendum is hereby made a part of IFB 16-17/P66, and it shall amend the said document in the following respects

1. The term of the contract that will be issued has been changed. It will only be for 6 months starting July 1, 2017 and ending December 31, 2017, with an option to renew on a month to month basis under the following conditions:
  - a. The initial month to month extension period can be no longer than 12 months or until December 31, 2018 before it requires the approval of the County Council.
  - b. Both Parties agree to the monthly extension at the same prices, terms and conditions of the initial contract.
  - c. The length of the contract and all month to month extensions cannot exceed 5 years, or June 30, 2022, provided that the County Council approve subsequent extension periods for each 12 months.
  - d. The County of Maui will not give monthly notice of any extensions. Extensions will be automatic unless either the County of Maui or the Contractor provides 30 days' written notice that they will not renew the monthly option.

Explanation: The County of Maui apologizes for this dramatic change in the scope of this concession bid. The restoration project that will ultimately replace this parking lot includes a buried wall that will be restored, and it has recently been determined that the best way to expose this wall is by digging first from the side of the wall underneath the existing parking lot. There are still a lot of unknowns about when this project will commence, which is why the month to month extension option period is lengthy and at this time the County can't commit to a fixed contract length of more than 6 months. Ultimately the County of Maui will decide when the restoration project will begin.

2. The upset price is changed from \$20,000 to \$15,000 per month.

If you have any questions, please call Greg King, Purchasing Division, at (808) 270-7488. Thank you for your cooperation.

FOR   
Approved  
DANILO F. AGSALOG  
Director of Finance

RECEIPT

Receipt is acknowledged of Addendum #3 for:

**Parking Lot Operation Concession at Front and Shaw Streets in Lahaina, Maui.**

Please acknowledge receipt of this addendum by either mailing this receipt page to the County of Maui Purchasing Division, 2145 Wells Street, Suite 104, Wailuku, HI. 96793 or by faxing to (808) 270-8295.

Received by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Date Received

**Addendum # 4**  
Parking Lot Operation Concession  
At Front and Shaw Streets in Lahaina, Maui

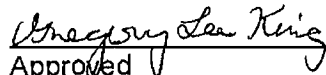
IFB No. 16-17/P66

This addendum is hereby made a part of IFB 16-17/P66, and it shall amend the said document in the following respects:

Attached are revised sections of the original Invitation for Bid documents which correct sections of the original document to reflect the changes made on addendum #3, including the upset price, the bid bond calculation, and the performance bond calculation. For the bid opening, you can use the attached to replace page 1 of the offer form, or you can use the existing offer form with the understanding among all parties that the upset price will be at \$15,000/month instead of the \$20,000/month shown.

If you have any questions, please call Greg King, Purchasing Division, at (808) 270-7488. Thank you for your cooperation.

FUR

  
Approved \_\_\_\_\_  
DANILO F. AGSALOG  
Director of Finance



**OFFER FORM**

**IFB NO. 16-17/P66**

Director of Finance  
County of Maui  
Wailuku, Maui, HI. 96793

Dear Sir:

The undersigned bidder declares and certifies that he has thoroughly examined and is familiar with the Invitation to Bidders and the Specifications for the Parking Lot concession at the northeastern quadrant of Front and Shaw Streets, Lahaina, HI, TMK 2-4-6-07, and that this proposal is made without collusion with any other person, firm or corporation. The undersigned further declares that he has read and fully understands the Disclaimer section of the specifications and has factored these uncertainties into the bid.

The undersigned bidder bids a fixed rental of **\$15,000** per month, or \_\_\_\_\_ percent of the gross, the greater thereof per month. Award will be made to the bidder offering the highest percentage of the gross.

It is understood that the bid upset amount is **\$15,000.00** per month, and that all bids that do not meet this minimum will be automatically rejected.

Upon acceptance of this proposal by the Director of Finance, and the award by the Director of Finance, the undersigned agrees to enter into and execute the contract agreement and furnish a bond as required within ten (10) days after such notice of award or within such further time as the Director of Finance may allow.

If the undersigned fails to enter into and execute the contract agreement and furnish a bond as required by law within ten (10) days after notice of such award or within such further time as the Director of Finance may allow, the Director of Finance may determine that the bidder has abandoned the contract and there-upon forfeiture of the security accompanying this proposal shall operate and the same become the property of the County of Maui.

Attached please find:

- Cash
- Certificate of Deposit
- Cashier's Check
- Certified Check
- Surety Bond

as required by the Specifications.

2. Bid Deposit

All bid proposals must conform to Hawaii Revised Statutes, Section 102-6, and must be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check, or certified check on a bank that is insured by the Federal Deposit Insurance Corporation in the amount of \$2,500.00 plus 2% of the amount of the total lease rent exceeding \$50,000.00. For this concession, the bid deposit will be \$3,300 (calculated as  $(\$15,000.00/\text{mo} \times 6 \text{ months}) = \$90,000.00$ .  $\$90,000.00 - \text{first } \$50,000 = \$40,000.00 \times .02 = \$800.00 + \$2500$  (on first \$50,000.) = \$3,300. The bid deposit must be payable at sight to the Director, or by a surety bond approved by the Director in a penal sum of equal amount.

The aforementioned surety bond shall conform to the Hawaii Revised Statutes, Section 102-8, and be executed to the Director as obligee, by the bidder as principal, and by any corporation organized for the purpose of becoming surety on bonds, authorized under the laws of the United States or of the State, if a foreign corporation; and under the laws of the State, if a Hawaii corporation, as a surety in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten (10) days after the award of within such further time as the Director may allow.

If the bidder to whom the contract for the concession is awarded fails or neglects to enter into the contract and/or furnish satisfactory security as required by Hawaii Revised Statutes, Section 102-11 and Section 102-12, within ten (10) days after the award, the Director shall pay the amount of the deposit into the County Treasury.

The proposal guarantee of all bidders shall be returned after the execution of the contract by the successful bidder, or if no contract is entered into, after the expiration of sixty (60) days after the opening of the bids or after the Director publishes another call for bids, whichever is sooner.

3. Upset Price:

Any bids less than the upset price of **Fifteen thousand dollars (\$15,000.00) per month** shall not be considered.

6. Performance Bond:

At the signing of the Lease and Concession Agreement, the concessionaire shall deposit with the Director of Finance legal tender, or a certified or cashier's check, or a surety bond in an amount equal to two (2) months minimum rental, or \$30,000.00, as security for the full and faithful performance of the Lease and Concession Agreement by the concessionaire.

RECEIPT

Receipt is acknowledged of Addendum #4 for:

**Parking Lot Operation Concession at Front and Shaw Streets in Lahaina, Maui.**

Please acknowledge receipt of this addendum by either mailing this receipt page to the County of Maui Purchasing Division, 2145 Wells Street, Suite 104, Wailuku, HI. 96793 or by faxing to (808) 270-8295.

Received by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Address of Firm

\_\_\_\_\_  
Date Received