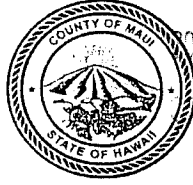


ALAN M. ARAKAWA  
Mayor



RECEIVED

2017 NOV -8 PM 7:18  
OFFICE OF THE MAYOR

MARK R. WALKER  
ACTING DIRECTOR OF FINANCE

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

November 8, 2017

RECEIVED  
2017 NOV 14 AM 9:34  
OFFICE OF THE  
COUNTY COUNCIL

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  
Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

*Alan Arakawa 11/13/17*

Dear Chair Guzman:

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

In response to your letter dated October 25, 2017, enclosed is a copy of the fully executed concession agreement. If you have any questions, please contact Greg King at ext. 7488.

Sincerely,

*for* *Gregory Lee King*

Mark R. Walker  
ACTING DIRECTOR OF FINANCE

ENCL.  
cc: Mayor Alan M Arakawa

**CONTRACT CERTIFICATION**

Not for Encumbrance

I, **MARK R. WALKER**, Director of Finance of the County of Maui, State of Hawaii,  
do certify that there is available appropriation or balance of an appropriation over and above all  
outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

<u>Appropriation Index</u>	<u>Title</u>	<u>Amount Required</u>
<u>n/a</u>	<u>n/a</u>	<u>\$0.00</u>

CONTRACT NO. M1027 DIAMOND PARKING SERVICE, LLC

Dated this 8 day of NOVEMBER 2017  
Time of Performance: July 1, 2017 - December 31, 2017

  
\_\_\_\_\_  
MARK R. WALKER  
Director of Finance

Parking Lot Concession, Lahaina -  
Corner of Shaw and Front Streets  
TMK: (2) 4-6-007-036

FY 2018

jh 

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 Kamani 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]

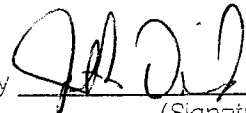
CONCESSION AGREEMENT NO. M1027

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)

Sumatra Diamond  
(Print Name)

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

Date 6/19/2017

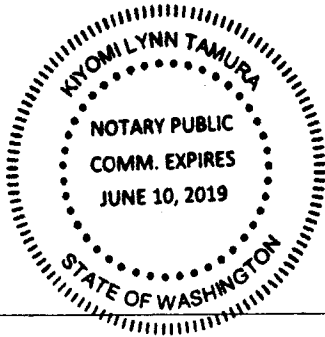
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CONCESSION AGREEMENT NO. M1027

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.

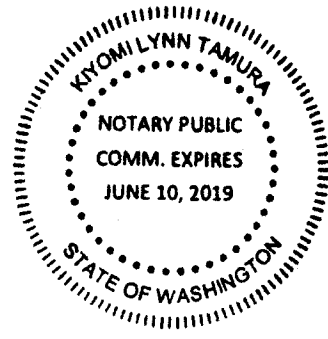


Kiyomi Lynn Tamura  
Notary Public, State of Washington

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:			





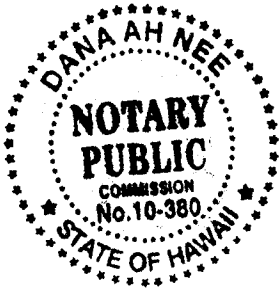


CONCESSION AGREEMENT NO. M1027

STATE OF HAWAII )  
 ) SS.  
 COUNTY OF MAUI )

On this 8<sup>th</sup> day of November, 2017, before me appeared MARK WALKER, to me personally known, who being by me duly sworn, did say that he is the Acting 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 MARK WALKER 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.

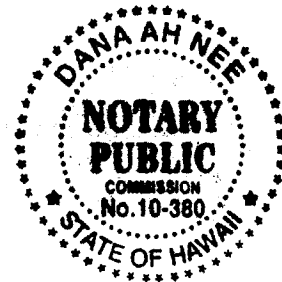


*Dana Ah Nee*  
 Notary Public, State of Hawaii

Print Name: DANA AH NEE

My commission expires: **NOV 14 2018**

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <b>NOV - 8 2017</b>	# Pages: <u>24</u>
Notary Name: <b>DANA AH NEE</b>	Judicial Circuit: <u>2nd</u>
Doc. Description: <u>Concession Agreement no. M1027 -</u>	
<u>Parking lot Concession Lahaina - corner of</u>	
<u>Shaw and Front Streets, MK: 4-6-007:036,</u>	
<u>IFB NO. 10-17/PL6</u>	
Notary Signature: <i>Dana Ah Nee</i>	
Date: <b>NOV - 8 2017</b>	



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.

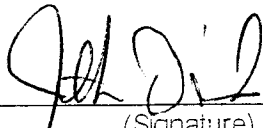
\*Reminder to agency: If the "is" block is checked and if the Agreement involves goods or services of a value in excess of \$500, the Agreement may not be awarded unless the Agreement is made after competitive bidding.

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)  
Jonathan Dineen  
(Print Name)

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

Date 6/17/2017

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.

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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

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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 Obligee 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 Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this 1st day of July, 2017.

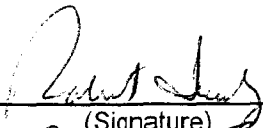
**[EXECUTION PAGES TO FOLLOW]**

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PRINCIPAL:

DIAMOND PARKING SERVICE, LLC

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

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CONCESSION AGREEMENT NO. M1027

STATE OF WASHINGTON )  
 ) SS.  
COUNTY OF KING )

On this 1st day of July, 2017, before me personally appeared Robert Turley, 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>07/01/2017</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>07/01/2017</u>	



CONCESSION AGREEMENT NO. M1027

SURETY:

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

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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

*(Stamp or Seal)*  
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>		
	_____		
	_____		
	_____		
Notary Signature:	<u>Patricia Ann White</u>		
Date:	<u>7/1/2017</u>		

*(Stamp or Seal)*  
PATRICIA ANN WHITE  
Notary Public, State of Washington  
My Commission Expires  
June 15, 2018

# POWER OF ATTORNEY

Direct Inquiries/Claims to:  
**THE HARTFORD**  
 BOND, T-12  
 One Hartford Plaza  
 Hartford, Connecticut 06155  
 Bond.Claims@thehartford.com  
 call: 888-266-3488 or fax: 860-757-5835

Agency Name: HUB INTERNATIONAL NORTHWEST LLC  
 Agency Code: 52-817010

**KNOW ALL PERSONS BY THESE PRESENTS THAT:**

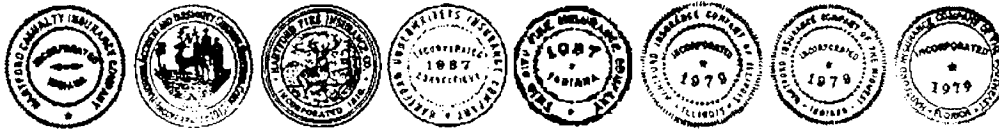
- Hartford Fire Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company**, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company**, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois**, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest**, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast**, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, **up to the amount of** Unlimited :

Teresa Glombecki, Carl M. Lovsted III, Patti White, Jim W. Doyle, Chad M. Epple, Julie M. Glover, Jim S. Kuich, Theresa A. Lamb, Rose Luskin, Michael A. Murphy, Andy D. Prill, S.M. Scott, Steve Wagner of BOTHELL, Washington

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

**In Witness Whereof**, and as authorized by a Resolution of the Board of Directors of the Companies on May 6, 2015 the Companies have caused these presents to be signed by its Senior Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



*John Gray*

John Gray, Assistant Secretary

*M. Ross Fisher*

M. Ross Fisher, Senior Vice President

STATE OF CONNECTICUT }  
 COUNTY OF HARTFORD } ss. Hartford

On this 11th day of January, 2016, before me personally came M. Ross Fisher, to me known, who being by me duly sworn, did depose and say: that he resides in the County of Hartford, State of Connecticut; that he is the Senior Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



CERTIFICATE

*Nora M. Stranko*

Nora M. Stranko  
 Notary Public  
 My Commission Expires March 31, 2018

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of July 15, 2017.  
 Signed and sealed at the City of Hartford.



*Kevin Heckman*

Kevin Heckman, Assistant Vice President