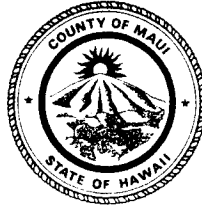


ALAN M. ARAKAWA
MAYOR



KEITH A. REGAN
MANAGING DIRECTOR

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

April 11, 2017

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

A handwritten signature in black ink, appearing to read "Alan M. Arakawa", followed by the date "4/11/17".

For Transmittal to:

Honorable Riki Hokama
Chair, Budget and Finance Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Hokama:

SUBJECT: FISCAL YEAR ("FY") 2018 BUDGET (BD-11) (BF-1)

Pursuant to your letter dated April 4, 2017, I am transmitting the following responses to your requests/questions regarding the Waiehu Golf Course:

1. For Fiscal Years 2006 through 2017 to date, provide the Council approved appropriation, actual amount expended, amount of supplemental transfer from the General Fund to the Golf Fund, Carryover/savings in the Golf Fund, revenues based on rounds played, and revenues from the concession for the pro shop and the restaurant.

Response: Please see attached.

2. Provide the terms of the contract for the pro shop, including contract period, amount, and any special conditions. Also, should the contract be terminated early, provide the penalties that may be incurred by the County.

Response: Please see attached contract for details relating to the pro shop, Hawaii Golf Equipment and Supplies (Lease Concession Agreement M1009). In summation, the term of the contract is five years, with a monthly base rent of \$23,000. The contract period commenced on 09/01/2011 and expired on 08/31/2016, with two one-year extensions; the first extension option was exercised and is ongoing for the period of 09/01/2016 – 08/31/2017. We are unaware of any early termination penalty provisions given that the contract would not be renewed pending the potential closure of the Waiehu Golf Course (additionally, see Section 28, paragraph three of the concession agreement). If necessary, proper legal counsel will be sought to further advise on this matter.

Honorable Riki Hokama, Chair
Budget and Finance Committee
Maui County Council
April 11, 2017
Page 2

3. Provide the terms of the contract for the restaurant, including contract period, amount, and any special conditions. Also, should the contract be terminated early, provide the penalties that may be incurred by the County.

Response: Please see attached contract for details relating to the restaurant, Savory Palate Hawaii Ltd (License and Food Concession Agreement M1017). In summation, the term of the contract is five years, with a monthly base rent of \$2,701. The contract period commenced on 07/01/2014 and expires on 06/30/2019. We are unaware of any early termination penalties at this time (see language in Section 9, Exhibit "2" of the concession agreement which appears to state termination rights). If necessary, proper legal counsel will be sought to further advise on this matter.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me at Ext. 7212.

Sincerely,



LYNN ARAKI-REGAN
Budget Director

Attachments (3)

xc: Mayor Alan M. Arakawa

Year	Council Approved Appropriation	Actual Amount Expended	Supplemental Transfer: General Fund to Golf Fund	Carryover/Savings in Golf Fund	Revenues: Rounds Played	Revenues: Concessions - Pro Shop	Revenues: Concessions - Restaurant
2006	\$ 1,703,195	\$ 1,809,287	\$ -	\$ 10,200	\$ 1,068,588	\$ 330,000	\$ 36,677
2007	\$ 2,015,879	\$ 1,838,229	\$ 355,879	\$ -	\$ 1,061,075	\$ 330,000	\$ 36,132
2008	\$ 2,130,126	\$ 1,948,573	\$ 329,126	\$ -	\$ 1,036,021	\$ 330,000	\$ 36,132
2009	\$ 2,382,151	\$ 2,451,008	\$ 672,151	\$ -	\$ 905,603	\$ 302,913	\$ 20,126
2010	\$ 2,326,878	\$ 2,804,023	\$ 1,096,878	\$ -	\$ 792,378	\$ 330,000	\$ 16,000
2011	\$ 2,269,576	\$ 2,489,758	\$ 669,163	\$ 160,413	\$ 835,735	\$ 302,500	\$ 19,200
2012	\$ 2,319,386	\$ 2,503,255	\$ 2,595,138	\$ (1,224,964)	\$ 773,663	\$ 312,500	\$ 19,200
2013	\$ 2,344,175	\$ 2,613,876	\$ 1,326,234	\$ (3,271)	\$ 820,295	\$ 276,345	\$ 19,200
2014	\$ 2,430,778	\$ 2,699,357	\$ 1,126,650	\$ 220,916	\$ 791,977	\$ 276,000	\$ 19,200
2015	\$ 3,815,282	\$ 3,758,602	\$ 2,544,644	\$ 128,226	\$ 769,545	\$ 281,007	\$ 85,689
2016	\$ 3,860,358	\$ 3,741,245	\$ 3,007,235	\$ (149,289)	\$ 854,905	\$ 276,000	\$ 32,412
2017	\$ 4,228,499	\$ 3,033,778*	\$ 2,767,331	\$ 458,756	\$ 621,242**	\$ 184,000	\$ 24,309

THAT 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 lease unto Concessionaire, and

Concessionaire does hereby lease and hire from County, for purposes of operating the golf cart/pro shop/driving range concession at the Waiehu Municipal Golf Course, (the "Premises") as described in that certain "Invitation for Bids for the Golf Cart/Pro Shop/Driving Range Concession at the Waiehu Municipal Golf Course, Wailuku, Maui, Hawaii, IFB No. 10-11/P62", attached hereto as Exhibit "1" and made a part hereof.

TO HAVE AND TO HOLD the Premises unto Concessionaire for the term of FIVE (5) years, commencing on the first day of September, 2011 up to and including the 31st day of August, 2016. Upon mutual agreement, the County and the Concessionaire shall have the option to extend the Contract for TWO (2) one-year extensions by written amendment, unless sooner terminated as hereinafter provided, County reserving and Concessionaire yielding and paying to County a net rental of TWENTY THREE THOUSAND AND NO/DOLLARS (\$23,000.00) per month, to the County of Maui, Department of Finance, at County's address designated herein or as otherwise designated in writing by County to Concessionaire.

RESERVING UNTO COUNTY THE FOLLOWING:

1. Minerals and Waters.

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.

2. Rights of way and easements. Such rights of way and easements as County in its sole discretion may from time to time determine for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage and appurtenances thereto, conveyors of rock and rock products and any other purposes, services and substances whatsoever, including without limitation public access to the shoreline, over, across, under the through the Premises, including the right to enter 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, County agrees that County shall restore, at County's expense, any improvements made by Concessionaire which were damaged as a result of such entry to a condition as near as practicable prior to such entry.

3. Prehistoric and Historic Remains. All prehistoric and historic remains found on the Premises.

4. Ownership of Fixed Improvements. County shall retain ownership of all improvements of whatever kind or nature, located on the land 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 the Agreement, any such improvements shall be the property of County.

CONCESSIONAIRE COVENANTS AND AGREES WITH COUNTY AS FOLLOWS:

1. Payment of Rent. Concessionaire shall pay said rent to County in advance, without notice or demand, on the first day of each month during the term hereof, in legal tender of the United States of America. Delinquency of rental payments extending beyond a one-month period from the first due date shall constitute a breach of this Agreement and shall be cause for termination of this Agreement by County. Interest at the rate of ONE AND HALF PERCENT (1.5%) per month shall be assessed for any overdue payment.

2. Acceptance of Rent Not a Waiver. The acceptance of rent by County shall not be deemed a waiver for any breach by Concessionaire of any term, covenant or condition of this Agreement, nor of County's right to re-enter for breach of covenant, nor of County's right to declare and enforce a forfeiture for any such breach, and the failure of County to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

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.

3. Condition of the Premises. Concessionaire acknowledges that Concessionaire is knowledgeable in concession matters and that Concessionaire has made all of the inspections and investigations necessary or desirable and has accordingly decided to lease the Premises on the basis set forth herein. Concessionaire has inspected the Premises and the current physical condition thereof and shall accept the Premises "as is" and in its condition as of the date of this Agreement. Concessionaire further acknowledges that County has made no representation or warranty, whether express or implied, with respect to the physical condition, state of repair, design, quality, durability, operation or fitness for use of the Premises.

4. Performance and Payment Bond. Upon the signing of this Agreement, Concessionaire shall deposit with the Director of Finance legal tender, a certified or cashier's check, or a surety bond issued by a surety organized for the purpose of being a surety and qualified to do business in Hawaii, in an amount equal to two

(2) months' minimum rental as a security for the full and faithful performance of this Agreement by Concessionaire.

5. Scope of Concession. Concessionaire shall provide golfing and other related services as defined in, and in accordance with, IFB No. 10-11/P62, Addenda Nos. 1 and 2, relating to the Golf Cart/Pro Shop/Driving Range Concession at Waiehu Municipal Golf Course, Wailuku, Maui, Hawaii, and in accordance with Concessionaire's Offer Form dated June 30, 2011, Addenda Nos. 1 and 2 attached hereto as Exhibit "2" and made a part hereof.

(a) Concessionaire shall provide golfing services, including exclusive repair and rental of golfing equipment such as golf clubs, golf bags, self-propelled golf carts, golf shoes, golf balls, golf tees, golf spikes, golf caps, golf shirts, golf rule books, athletic socks, umbrellas, windbreakers (jackets), sunglasses, and other related golf equipment and accessories. Concessionaire may provide for sale of such golfing equipment.

(b) Concessionaire shall provide and make available throughout the term of this Agreement a minimum of one hundred (100) self-propelled golf carts in top condition, which shall be maintained in good working condition at all times. Any used carts must be approved by the Director of Parks and Recreation, or the Director's authorized representative ("Officer in Charge"). Concessionaire shall provide and make available a minimum of fifty (50) self-propelled carts at the start of the Agreement, with the balance on hand within sixty (60) days after the start of the Agreement.

In the event the Officer in Charge, or person or persons the Officer in Charge may duly designate and appoint, notifies Concessionaire that in the Officer's sole discretion the use of self-propelled golf carts at any given time would be detrimental to the golf course due to weather, condition of the fairways, condition of the carts, etc., Concessionaire shall not rent out said self-propelled golf carts. Failure by Concessionaire to abide by the decision of the Officer in Charge or the Officer's representative shall constitute a breach of Agreement.

Concessionaire shall keep all self-propelled carts and improvements in good order and safe condition, repair, and appearance and shall immediately remove from the Premises equipment that does not meet such requirements. Concessionaire may use additional self-propelled carts with the approval of the Officer in Charge.

(c) Concessionaire shall provide and make available during the term of this Agreement a minimum of twelve (12) rental golf hand carts and minimum of twelve (12) golf club rental sets, including left-handed and right-handed men's and women's sets.

(d) Concessionaire shall provide balls for rental at the driving range, and shall provide pickup of driving range balls. Balls collected by Concessionaire shall be the property of Concessionaire for resale purposes or for use for the driving range.

(e) Concessionaire may provide lessons and instructions on the game of golf taught at the golf course. Such lessons may be personally taught by Concessionaire's golf

professional or by another declared professional designated and authorized by said Concessionaire and approved by the Officer in Charge. Concessionaire's golf professional may conduct public clinics and classes, and may schedule exhibitions with other professionals, subject to the approval of the Officer in Charge.

(f) Concessionaire may organize and conduct a Junior Golf Program consisting of lessons and tournaments as approved by the Director of Parks and Recreation.

6. Location of sales, rentals, and repairs.

Concessionaire shall confine his sales, rentals, and repairs to the golf concession area; provided, however, that Concessionaire shall place Concessionaire's carts and self-propelled golf carts when not in use within the area designated by the Officer in Charge, or the Officer's representative.

7. Prices. The prices charged by Concessionaire for rentals shall be reasonable and not in excess of average prevailing prices charged at other municipal golf courses in the State. Prices charged for sales, services, and repairs shall also be reasonable and not in excess of the average prevailing prices charged elsewhere for the same or similar kinds of sales, services, or repairs in the County. The price ceiling list for rentals and sales shall have the prior approval of the Director of Finance, and shall be posted conspicuously on the Premises.

The price ceiling list submitted with Concessionaire's Proposal shall remain in effect during the first year of the term of this Agreement. Concessionaire shall not change the price

ceiling list during the first year of the term of this Agreement. Thereafter, all requests, if any, for changes in the price ceiling list shall be submitted in writing to the Director of Finance. Such request shall list all operating and maintenance costs of Concessionaire (excluding Agreement rental), the net profit for the preceding twelve (12) months, and such other data as may be required by the Director.

8. Hours of Operation. Concessionaire shall open and operate said concession at all times during the hours when the Waiehu Municipal Golf Course is open for business.

9. County Financial Monitoring. Within sixty (60) days after the close of each fiscal year, Concessionaire shall file with the Director of Finance an income statement and a balance sheet on the operation of the Concession for the prior fiscal year. The income statement shall show detailed revenues from each portion of the concession (golf cart/pro shop/driving range), and all operating expenses by type. Failure to file said financial statements as set forth herein shall constitute a material breach of this Agreement and County may thereupon terminate this Agreement.

Within twenty (20) days after the close of each month, Concessionaire shall present to the Director of Finance a statement, certified by Concessionaire, reporting the gross monthly income for the prior month. Such statement shall itemize the gross monthly income for the prior month from the following sources:

A. Sale of golf merchandise;

- B. Rental of golf equipment and supplies;
- C. Rental of self-propelled carts;
- D. Rental of golf hand carts;
- E. Golf equipment repairs;
- F. Golf instructional services;
- G. Driving range revenues; and
- H. All other revenues in detail.

In addition, Concessionaire shall present to the Director of Finance a copy of the monthly gross income report filed by Concessionaire with the State Department of Taxation and any other information requested by the Director of Finance.

If any question arises with respect to what constitutes concession gross income not otherwise covered in this Agreement, the interpretation given and made by the Director of Finance shall govern and be final.

The Director of Finance, or the Director's duly authorized representative, shall have, and Concessionaire shall provide, reasonable access to Concessionaire's books, records, documents, and other evidence pertinent to the performance of the services covered under this Agreement for purposes of inspection, audits and copying.

10. Condition of equipment. Concessionaire shall maintain all equipment rented to the general public in a safe and proper working condition. Concessionaire shall remove all rental equipment not meeting safety requirements from the Premises and, if needed, replace said equipment by another in good working

condition. In the event of mechanical breakdown of the rental carts while in use, Concessionaire shall make a refund in accordance with a schedule to be approved by the Director of Finance. Whenever possible, however, Concessionaire shall replace said cart with one in good working condition without added cost to the user.

11. Alcohol. At no time shall Concessionaire sell or give away or permit the selling or giving away of any alcoholic beverages, or allow any alcoholic beverages to be consumed within or about the Premises.

12. Taxes, Assessments, Etc. Concessionaire shall pay or cause to be paid, when due, the amount of all taxes, rates, assessments and other outgoings of every description as to which the Premises, or any part thereof, or any improvements thereon, or County or Concessionaire in respect thereof, are now or may be assessed or become liable by authority of law during the term of this Agreement; 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.

13. Utility Services. Concessionaire shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the Premises, or any part thereof, or any improvements thereon, or County or Concessionaire in respect thereof, may during

said term become liable, whether assessed to or payable by County or Concessionaire.

14. Covenant Against Discrimination. Concessionaire shall not discriminate against anyone based upon sex, sexual orientation, national origin, age, race, color, religion or disability. Notice setting forth the provisions of this non-discrimination clause shall be conspicuously posted on the Premises by Concessionaire.

15. Sanitation. Concessionaire shall keep the Premises and improvements in a strictly clean, sanitary and orderly condition.

16. Repair and Maintenance. Concessionaire shall at its own expense, from time to time and at all times during the term, well and substantially repair and maintain, mend, 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. Concessionaire shall repair or cause to be repaired any damages to said property caused by Concessionaire, Concessionaire's employees, agents, guests, or patrons.

Concessionaire shall arrange Concessionaire's carts and self-propelled golf carts in a neat and orderly fashion within the area as provided for herein whenever said carts are not in use. The washing of the golf carts shall be performed by Concessionaire in an area to be designated by the Officer in Charge. Maintenance of the driving range shall be the responsibility of County.

Concessionaire shall be responsible for the care and maintenance of the hitting area and replacement of tees and matting.

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.

18. No Use of Hazardous Materials. Concessionaire shall not use, generate, manufacture, treat, handle, refine, produce, store, discharge, release, dispose of or allow to exist on, within, under or about the Premises, any hazardous materials, except in full compliance with all applicable hazardous material laws. Concessionaire shall indemnify and hold County harmless from and against all claims, losses, and liabilities, including reasonable attorney's fees, incurred by County which may arise out of or be attributable to Concessionaire's use, generation, manufacture, treatment, handling, refining, production, storage, discharge or release of hazardous materials on, within, under or about the Premises. This indemnity shall survive the expiration, termination or assignment of this Agreement.

19. Compliance with Laws. Concessionaire shall comply with all of the requirements of all county, state, and federal authorities, including maintaining in good standings its license with the State Department of Commerce and Consumer Affairs, and observe all county, state, and federal laws pertaining to the Premises, now in force or which may hereinafter be in force.

20. Inspection of Premises. Concessionaire shall permit County and its agents, at all reasonable times during the term of this Agreement, to enter the Premises and examine the state of repair and condition thereof.

21. Attachments and Encumbrances. Concessionaire shall not commit or suffer any act or neglect whereby the Premises, or any improvement thereon, or the estate of Concessionaire in the same, shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless County from and against all attachments, liens, charges and encumbrances and all expenses resulting therefrom.

22. Alterations or Improvements. Concessionaire shall not at any time construct, place or install any permanent alterations or improvements to the Premises, except with the prior written consent of the Officer in Charge and upon such conditions as County may impose, including, but not limited to, any adjustment of rent. Requests to make any permanent alterations or improvements shall be in writing, and 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, Concessionaire and shall become the property of County upon completion.

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 rents of all improvements and buildings situated on the Premises for all costs, attorney's 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 due are paid.

24. Indemnity. To the extent permitted by law, Concessionaire shall indemnify, defend and hold County harmless from and against any claim or demand for loss, liability or damage, including claims for property damage, personal injury or death, and reasonable attorneys' fees, arising out of, caused or occasioned by, or resulting from, the conduct or management of any work or thing whatsoever done by Concessionaire or Concessionaire's agents and employees, including, but not limited to, any accident, fire or nuisance, Concessionaire's failure to maintain the Premises in a safe condition, any act or omission of Concessionaire, or the non-observance or non-performance by Concessionaire of any of the terms, covenants and conditions herein or the rules, regulations, ordinances and laws of the federal, state, or county governments. The provisions of this paragraph shall remain valid and binding

upon Concessionaire notwithstanding the expiration or termination of this Agreement.

25. Cost of Litigation. In the event that the County shall, without substantial fault on its part, be made a party to any litigation commenced by or against Concessionaire (other than condemnation proceedings), Concessionaire shall and will pay all costs and expenses incurred by or imposed on County; furthermore, Concessionaire shall pay all costs and expenses, including reasonable attorney's fees, which may be incurred by or paid by County in enforcing the covenants and agreements of this Agreement, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges.

26. Liability Insurance. Concessionaire shall procure, its own cost and expense, and maintain during the entire period of this Agreement, a policy or policies of comprehensive public liability insurance, in an amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), 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 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, each certificate to contain or be accompanied by an assurance of the

insurer to notify County of any intention to cancel the policy sixty (60) days prior to actual cancellation. The procuring of this policy shall not release or relieve Concessionaire of Concessionaire's responsibilities under this Agreement or limit the amount of its liability under this Agreement. The notice to cancel shall be sent to County thirty (30) days prior to the date of cancellation. Insurance policies shall name County as an additional insured.

27. 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 actual cancellation. Insurance policies shall name County as an additional insured.

28. Disclaimer; Reservation of Rights by County. County makes no guaranties, representations or warranties regarding revenue or net income to be derived by Concessionaire from the concession or this Agreement.

County shall not be liable to responsible for any golf course closures, interruptions or play, reduction in, or loss of concession revenue or net income due to construction activity, golf course maintenance or special events. County reserves the right to schedule and proceed with golf course construction activity and maintenance during the term of the Agreement. County also reserves the right to close the course for special events.

County shall not be liable or responsible for any golf course closures, interruptions in play, reduction in, or loss of, concession revenue or net income due to causes or events including, 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.

County shall not be liable or responsible for any damage or loss to driving range equipment or golf carts due to causes not involving the fault or negligence of County. Concessionaire shall be responsible for proper supervision of golf cart operators so as to minimize damage or loss to golf carts and to the golf course.

In case of destruction of the Premises by a casualty, Concessionaire shall not be entitled to any compensation or damages from County for Concessionaire's loss of use of the whole or any part of the Premises, personal property of Concessionaire or of any other third party, or any inconvenience or annoyance occasioned by such damage, repair or restoration.

29. Breach. Time is of the essence of this Agreement and if Concessionaire shall fail to pay such rent or any part thereof at the times and in the manner aforesaid within thirty (30) days after delivery by County of a written notice of such breach or default, or if Concessionaire shall become bankrupt, or shall abandon the Premises, or if this Agreement and the Premises shall be attached or otherwise be 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, terms and conditions herein contained and on its part to be observed and performed, 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 its last know address, County may, in addition to any other recourse, at once re-enter the Premises, assume full control and management of the administration and operation of the golf course for the duration of the Agreement, and upon or without such entry, at its option, terminate this Agreement without prejudice to any other remedy or right of action for arrears of rent or other breach of contract; and in the event of such termination, all buildings and improvements thereon shall remain and become the property of County; furthermore, County shall retain all rent paid in advance as damages.

30. Funding. Concessionaire shall be solely responsible for the funding of its improvements, maintenance, and operation of the Premises.

31. 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, the rental shall be reduced in proportion to the value of the portion of the Premises condemned. 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. Concessionaire shall not by reason of the condemnation be entitled to any claim against County for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of County. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises was demised, Concessionaire shall have the option to surrender this Agreement and be discharged and relieved from any further liability therefor.

32. Right to Enter. County and the agents or representative thereof shall have the right to enter and cross any portion of the Premises for the purposes of performing any public or official duties; provided, however, in the exercise of such rights, County shall not interfere unreasonably with Concessionaire or Concessionaire's use and enjoyment of the Premises.

33. Extension of Time. County may in its sole discretion for good cause shown, allow additional time, beyond the time or times specified herein to Concessionaire, in which to comply, observe and perform any of the terms, conditions and covenants contained herein; provided, however, that this provision shall not be construed to permit any extension of the aforesaid FIVE (5) year term of this Agreement.

34. Surrender. Concessionaire shall, at the end of said term or other sooner termination of this Agreement, peaceably deliver unto County possession of the Premises, together with all

improvements existing or constructed thereon. Furthermore, upon the expiration, termination or revocation of this Agreement, should Concessionaire fail to remove any and all of Concessionaire's personal property from the Premises, County may remove any and all such personal property from the Premises and place said property in storage at the cost and expense of Concessionaire, and Concessionaire does hereby agree to pay all costs and expenses for removal and storage of such personal property.

35. Right to Estoppel Certificates. Concessionaire, within ten (10) days after notice from County, shall execute and deliver to County, in recordable form, a statement certifying in substance that (I) this Agreement represents the entire agreement of County and Concessionaire and is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, (ii) the amount of the rental and the amount of any security deposit or prepaid rental, (iii) there has been no transfer of this Agreement nor of Concessionaire's interest therein, and (iv) there are not, to Concessionaire's knowledge, any uncured defaults on the part of County and that Concessionaire has no right of offset, counterclaim or deduction against rent, or specifying such defaults, if any are claimed, together with the amount of any alleged offset, counterclaim or deduction. Failure to deliver the certificate within the ten (10) days shall be conclusive that (I) this Agreement is in full force and effect and has not been modified except as may be represented by County, and (ii) there are no uncured defaults in County's performance and

Concessionaire has no right of offset, counterclaim or deduction against rental.

36. Assignment, 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.

37. Modification of Agreement. No waiver or modification of this Agreement or of any covenant, condition, or limitation contained in this Agreement shall be valid unless in writing and duly executed by the party to be charged. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration or litigation between the parties arising out of, or affecting the rights or obligations of, the parties to this Agreement, unless such waiver or modification is in writing and duly executed by the party to be charged. The parties further agree that the provisions of this section may not be waived except as set forth above.

38. Conflict. In the event of conflict between this Agreement and the incorporated documents, the term of this Agreement shall control.

39. Hawaii Law. This Agreement shall be construed in accordance with the law of the State of Hawaii.

40. Notices. Any notice or demand that a party may or is required to give to the other party to this Agreement shall be in writing and given to such party, addressed to it at the party's address provided on the first page of this Agreement or to such other address as shall be designated by one party in a written notice to the other party. Each such notice or demand shall be effective (a) if given by mail, five (5) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (b) if given by any other means, when delivered at the address specified above.

41. Waiver of Jury Trial. The parties mutually waive any and all rights which either of them may have to request a jury trial in any action.

42. No Partnership Intended. It is expressly understood that County does not in any way or for any purpose become a partner of Concession in the conduct of its business or otherwise or a joint venturer or a member of a joint enterprise with Concessionaire.

43. Provisions Are Covenants and Conditions. All provisions, whether covenants or conditions, on the part of Concessionaire shall be deemed to be both covenants and conditions.

44. 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.

45. Entire Agreement. This Agreement contains the entire agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither has made any representation with respect to the subject matter of this Agreement, except such representations as are specifically set forth herein, and each party acknowledges that the party has relied on the party's own judgment in entering into this Agreement. The parties hereto further acknowledge that any payments or representations that may have heretofore been made by either of them to the other are of no effect and that neither has relied thereon in connection with dealings with the other.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of this 27th day of July, 2011.

COUNTY OF MAUI

for

By

ALAN M. ARAKAWA
Its Mayor

By

DANILO F. AGSALOG
Its Director of Finance

CONCESSIONAIRE:

HAWAII GOLF EQUIPMENT AND SUPPLIES, LLC

By Arthur J. Rego
(Signature)
Arthur J. Rego
(Print Name)
Its Member - Manager
(Title)

By Catherine M. Condeiro
(Signature)
Catherine M. Condeiro
(Print Name)
Its Member - Manager
(Title)

APPROVED AS TO FORM
AND LEGALITY:

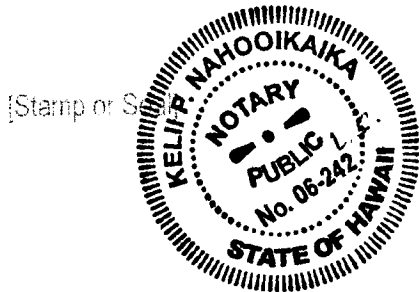
Adrianne N. Heely
ADRIANNE N. HEELY
Deputy Corporation Counsel
County of Maui

S:\CLERICAL\EKVAGREEMENT\CONCESSION\hawaiiigolfequipmentm1009finking.wpd

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 27th day of July, 2011, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, Keli P. Nahookaika did say that he is the Mayor 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 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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.



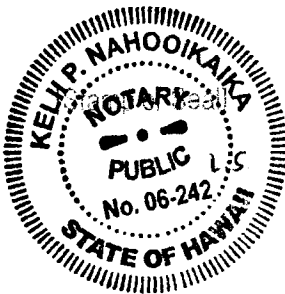
Keli P. Nahookaika
Notary Public, State of Hawaii
Print Name: KELI P. NAHOOIKAIKA
My commission expires: 4/30/2014

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>7-27-11</u>	# Pages:	<u>27</u>
Notary Name:	<u>KELI P. NAHOOIKAIKA</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>lease and concession</u>		
	<u>agreement</u>		
Notary Signature:	<u>Keli P. Nahookaika</u>		
Date:	<u>7-27-11</u>		

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 27th day of July, 2011, 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.

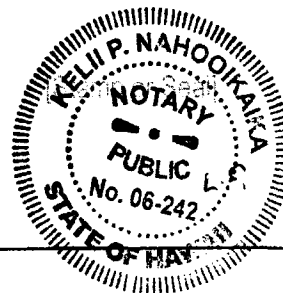


Kelii P. Nahooikaika
Notary Public, State of Hawaii

Print Name: KELII P. NAHOOIKAICA

My commission expires: 4/30/2014

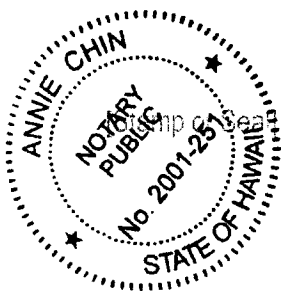
NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>7-27-11</u>	# Pages:	<u>30</u>
Notary Name:	<u>KELII P. NAHOOIKAICA</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>lease, concession</u>		
	<u>agreement</u>		
Notary Signature:	<u>Kelii P. Nahooikaika</u>		
Date:	<u>7-27-11</u>		



STATE OF Hawaii)
County of Maui) SS.

On this 25th day of July, 2011, before me personally appeared CATHERINE M. CORDEIRO, to me 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.

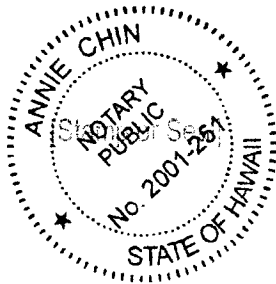


Annie Chin
Notary Public, State of Hawaii

Print Name: ANNIE CHIN

My commission expires: JUNE 10, 2013

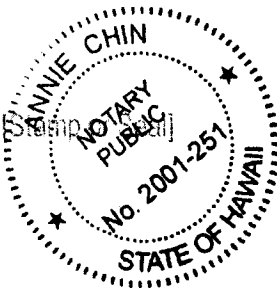
NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>UNDATED AT TIME OF NOTARIZATION</u>	# Pages: <u>30</u>
Notary Name: <u>ANNIE CHIN</u>	Judicial Circuit: <u>SECOND</u>
Doc. Description: <u>LEASE AND CONCESSION</u>	
<u>AGREEMENT</u>	
Notary Signature: <u>Annie Chin</u>	
Date: <u>7.25.11</u>	



STATE OF Hawaii)
County of Maui) SS.

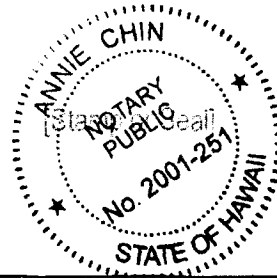
On this 25th day of July, 2011, before me personally appeared ARTHUR J. REGO, to me known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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



Annie Chin
Notary Public, State of Hawaii
Print Name: ANNIE CHIN
My commission expires: JUNE 10, 2013

NOTARY PUBLIC CERTIFICATION	
Doc. Date: <u>undated AT TIME OF NOTARIZATION</u>	# Pages: <u>30</u>
Notary Name: <u>ANNIE CHIN</u>	Judicial Circuit: <u>SECOND</u>
Doc. Description: <u>LEASE AND CONCESSION</u> <u>AGREEMENT -</u>	
Notary Signature: <u>Annie Chin</u>	
Date: <u>7-25-11</u>	



INVITATION FOR BIDS

FOR THE

GOLF CART / PRO SHOP / DRIVING RANGE CONCESSION

AT THE

WAIIEHU MUNICIPAL GOLF COURSE

WAILUKU, MAUI, HAWAII

IFB No. 10-11/P62

EXHIBIT " 1 "

INVITATION TO BIDDERS

IFB No. 10-11/P62

Sealed bids for the Golf Cart / Pro Shop / Driving Range Concession at the Waiehu Municipal Golf Course, IFB NO. 10-11/P62, will be received up to 2:00 p.m. on

June 1, 2011

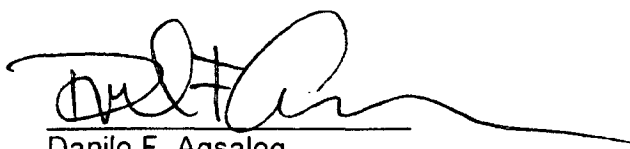
and publicly opened thereafter at the Department of Finance, Purchasing Division, 2145 Wells Street Suite 104 (Wells Street Professional Building), Wailuku, HI. 96793.

The concession will be awarded for a five (5) year period beginning **September 1, 2011 and ending August 31, 2016**, with a potential two year extension option.

The concession will be awarded through a multiple step competitive sealed bid process. The first phase will consist of a bidders qualification process. The deadline for submission of unpriced qualification offers is **May 12, 2011 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 **June 1, 2011** as stated above.

Specifications and offer forms can be downloaded from the County website @ <http://www.co.maui.hi.us/bids.aspx>, or they may be obtained at the Department of Finance, Purchasing Division, located at 2145 Wells Street Suite 104, Wailuku, HI. 96793

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

A handwritten signature in black ink, appearing to read 'Danilo F. Aagsalog', is written over a horizontal line.

Danilo F. Aagsalog
Director of Finance

Maui News: April 20, 22, 24, 2011

OFFER FORM

IFB NO. 10-11/P62

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 Golf Cart / Pro Shop / Driving range concession at the Waiehu Municipal Golf Course 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 declares and certifies that he has noted the changes in this bid from the last one, **including the additional requirement of providing sand bottles on the carts, and the change in the length of the contract.**

The undersigned bidder bids a fixed rental of \$ _____ per month.

It is understood that the bid upset amount is **\$23,000.00** per month, and that all bids that do not meet this minimum will be automatically rejected.

The undersigned bidder shall complete the price ceiling list below:

Rental of self-propelled cart

Rental of golf clubs

Rental of hand golf cart

Rental of golf shoes

Rental of driving range balls per bucket

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. 10-11/P62

I. Multiple Sealed Bid Process/ Bid Preparation

The golf cart / pro shop / driving range concession 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 golf concession as described in the Qualifications Section of this Specification and based on the specifications of this RFP. 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 unpriced qualification offers is **May 12, 2011 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 **June 1, 2011 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 monthly fee, provided that it exceeds the upset price, 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 RFP. If there is any additional literature or information that you would like to provide that is not relevant to a specific RFP 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 RFP, 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 RFP shall be allowed after the 1st phase submission deadline.

Contractors shall immediately notify Greg King @ (808) 249-2403 x30 if any ambiguities, conflicts, discrepancies, omissions, or other errors in this RFP are discovered. Any other questions regarding this RFP should be addressed to Greg King at (808) 249-2403 x30 or Fax # (808) 249-0839.

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. Business Experience/Capability.
2. Experience in operating golf course or comparable operations/concessions.
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 RFP Phase II bid opening.

The Director of the Finance reserves the right to accept or reject any or all RFP's and to waive any minor or inadvertent discrepancy in the RFP 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. If your company has specific golf course experience or qualifications, please describe in detail. 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 have a minimum experience of five (5) years successfully operating a business or concession of similar size and complexity to the golf course concession described in these specifications. Specific golf course concession or management experience is desirable, and will be considered in the evaluation process.

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 RFP.

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.

4. Contract Start up date

Please describe in detail how your firm, if selected, would comply with the **September 1, 2011** start up date based on a **mid June 2011** projected award date.

IV. Scope of Concession

The concessionaire shall provide exclusive golfing 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 prices charged for rentals shall be reasonable and not in excess of 10% above the average prevailing prices charged at the other municipal golf courses in the State. The 10% additional is allowed as a partial compensation for the lack of electric facilities to support electric carts. Prices charged for sales, services, and repairs shall also be reasonable and not in excess of the average prevailing prices charged elsewhere for the same or similar kind of sales, services, or repairs in the County. The price ceiling list for rentals and sales shall have the prior approval of the Director of Finance, and must be posted conspicuously on the premises. The price ceiling list for the first year must be submitted with the Bid Proposal and shall be subject to the approval of the Director of Finance.

No changes in the price ceiling shall be considered during the first year of the concession term. Thereafter, all requests for changes in the price ceiling shall be submitted in writing to the Director of Finance. Such requests shall list all operating and maintenance costs of the concessionaire, excluding lease rental, and the net profit for the preceding twelve (12) months; and such other data as may be required by the Director.

The term "golfing services" shall mean:

Exclusive sales, repair, and rental of golfing equipment may include the following: golf clubs, golf bags, self-propelled golf carts, golf shoes, golf balls, golf tees, golf spikes, golf caps, golf shirts, golf rule books, athletic sox, umbrellas, windbreakers (jackets), sun glasses, and other related golf equipment and accessories.

A minimum of one hundred (100) self propelled golf carts in top condition, which shall be maintained in excellent working condition at all times, must be available during the term of the contract. Top condition, at a minimum, means that at all times the carts will experience less than 1% failure rate during the course of a round, will have no structural or aesthetic damage as a result of corrosion, and the braking distance will be adequate to meet all industry safety standards. The carts are subject to a quarterly inspection by the Parks Department, and the Parks Department will be the sole determinant as to whether or not a cart is considered to be in top condition. **The carts must be equipped with sand bottles so the golfers are able to repair divots on the course.** Any used carts must be approved by the Officer in Charge.

All self-propelled carts and improvements shall be kept in good order and safe condition, repair, and appearance and shall be immediately removed from the premises when such equipment does not meet such requirements. Additional self-propelled carts may be used with the approval of the Officer in Charge.

A minimum of twelve (12) rental golf hand carts shall be provided.

A minimum of twelve (12) golf club rental sets, including left-handed and right-handed men's and women's sets, shall also be provided.

Driving range - Provide balls for rental, and daily pickup of driving range balls.

In the event the Officer in Charge, or person or persons he may duly designate and appoint, notifies the concessionaire that in his sole discretion the use of self-propelled golf carts at any given time would be detrimental to the golf course due to weather, condition of the fairways, condition of the carts, etc., the concessionaire shall not rent out said self-propelled golf carts. Failure to abide by the decision of the Officer in Charge or his representative shall automatically result in a breach of contract.

Lessons and instructions on the game of golf taught at the golf course may be personally taught by the concessionaire's golf professional or by another declared professional designated and authorized by said concessionaire and approved by the Officer in Charge.

The concessionaire shall maintain all equipment rented to the general public in a safe and proper working condition.

All rental equipment not meeting safety requirements shall be removed from the premises and, if needed, replaced by another in good working condition. In the event of mechanical breakdown of the rental carts while in use, the concessionaire shall make a refund in accordance with a schedule to be approved by the Director of Finance. Whenever possible, however, the concessionaire shall replace said cart with one in good working condition without added cost to the user.

At no time shall the concessionaire sell or give away or permit the selling or giving away of any alcoholic beverages, or allow any alcoholic beverages to be consumed within the golf concession area, cart maintenance area, or parking lot.

The concessionaire shall confine his sales, rentals, and repairs to the golf concession area; provided, however, that he shall place his carts and self-propelled golf carts when not in use within the area designated by the Officer in Charge, or his representative.

Golf equipment sales and golf lessons are optional activities which are not required to be provided by this concession. An additional opportunity for revenue by the concessionaire is the collection of balls left on the golf course by the golfers after closing hours. Balls collected by the concessionaire will be the

property of the concessionaire for resale purposes or to be used as rental balls for the driving range.

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 golf course closures, interruptions of play, reduction in, or loss of concession revenue or net income due to construction activity or golf course maintenance. The County reserves the right to schedule and proceed with golf course construction activity and maintenance during the term of the contract. The County also reserves the right to close the course for special events.

The County shall not be liable or responsible for any golf course closures, interruptions in play, reduction in, or 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.

The County shall not be liable or responsible for any damage or loss to driving range equipment or golf carts due to causes not involving the fault or negligence of the County. Concessionaire shall be responsible for proper supervision of golf cart operators so as to minimize damage or loss to golf carts and to the golf course.

VI. Other Provisions

1. Governing Laws

This RFP 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. The total lease rent is the monthly rent offered x 60 months. 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 **Twenty Three thousand dollars (\$23,000.00) 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 Waiehu Municipal Golf Course/Pro Shop concession to provide the exclusive services contemplated for a period of **five (5) 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. Description of the Premises:

The concessionaire may sell, rent, or repair golf equipment and other golfing related accessories in the area set aside for concession purposes at the Waiehu Municipal Golf Course Clubhouse, hereinafter referred to as the "Golf Concession Area," which is located next to the ladies locker room. The concessionaire may also utilize the area marked cart storage for the storage of carts.

The concession premises covered by this contract is shown as the cross-hatched area in Exhibit "A."

6. 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.

7. 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 as security for the full and faithful performance of the Lease and Concession Agreement by the concessionaire.

8. 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 and shall become the property of the County of Maui upon completion.

9. Maintenance of Golf Concession Area:

The concessionaire shall be responsible for the reasonable and proper care of the Golf Concession Area. He shall repair or cause to be repaired any damages to said property caused by himself, his employees, agents, guests or patrons, and he shall keep and maintain the area in a clean and sanitary condition. The concessionaire shall also arrange his carts and self-propelled golf carts in a neat and orderly fashion within the area as provided for herein and whenever said carts are not in use. The maintenance of the driving range shall be the responsibility of the County of Maui. The concessionaire shall be responsible for the care and maintenance of the hitting area and replacement of the matting. The washing of the golf carts shall be performed in an area to be designated by the Officer in Charge.

10. 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 telephone, water, refuse collection, and electricity charges. 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.

11. 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.

12. 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. All placement and installation shall be made only upon written approval of the Officer in Charge.

13. Hours of Operation:

The concessionaire shall open and operate said concession at all times during the hours when the Waiehu Municipal Golf Course is open for business.

14. 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.

15. 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.

16. 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.

17. Insurance:

The concessionaire shall procure, purchase, and maintain the following insurance during the term of the Agreement:

- a. Public liability insurance in an amount not less than \$1,000,000 combined single limit for each occurrence.
- b. Property damage insurance in an amount not less than \$100,000.
- c. Fire insurance in an amount equal to 100% of the replacement value of the premises to be established by the insurance appraiser and as approved by the Director of Finance.

Copies of said insurance policies shall be filed with the Director of Finance. Each insurance policy shall contain a clause whereby the insurance company shall agree to give written notice to the Finance Director thirty (30) days prior to cancellation or alteration of said policy. All expenses connected with the procuring of insurance shall be borne by the concessionaire. Insurance policies shall name the County of Maui as an additional insured for its own acts and/or omissions thereon.

18. 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.

19. 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.

20. 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.

21. Term of Agreement:

The term of this contract will be from **September 1, 2011 to August 31, 2016** unless otherwise terminated sooner as set forth herein. In addition, this contract will allow for a potential two one (1) year extensions from September 1, 2016 to August 31, 2018 upon mutual agreement of the contractor and the County.

22. 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.

23. Pre Award Tax Clearance: An original or certified copy of a tax clearance issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS) is required prior to the awarding of the

contract. It is therefore requested that the tax clearance be submitted with your sealed offer.

24. 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.

Addendum #1

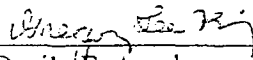
Invitation for Bid
Golf Cart, Pro Shop, Driving Range Concession
at the Waiehu Golf Course
Job No 10-11/P62

This addendum is hereby made a part of Job No. 10-11/62 for the Golf Cart, Pro Shop, Driving Range Concession, and it shall amend the said documents in the following respects:

1. The bid opening is extended from June 1, 2011 until July 1, 2011 at 2:00 p.m.

FLR

Approval:



Danilo F. Aagsalog
Director of Finance

Issued: May 19, 2011

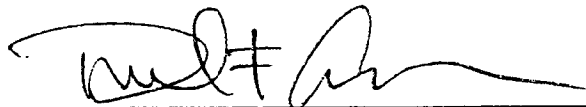
Addendum #1.

**Invitation for Bid
Golf Cart, Pro Shop, Driving Range Concession
at the Waiehu Golf Course
Job No 10-11/P62**

This addendum is hereby made a part of Job No. 10-11/62 for the Golf Cart, Pro Shop, Driving Range Concession, and it shall amend the said documents by adding the following provision:

1. The County of Maui reserves the right, with 90 days notice, to cancel the concession bid if the golf course operations are privatized during the term of the contract. The concessionaire agrees not to pursue the County for any financial or any other damages which may occur due to this option.

Approval:



Danilo F. Agsalog
Director of Finance

Issued:

June 22, 2011

OFFER FORM

IFB NO. 10-11/P62

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 Golf Cart / Pro Shop / Driving range concession at the Waiehu Municipal Golf Course 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 declares and certifies that he has noted the changes in this bid from the last one, **including the additional requirement of providing sand bottles on the carts, and the change in the length of the contract.**

The undersigned bidder bids a fixed rental of \$ 23,000 per month.

It is understood that the bid upset amount is \$23,000.00 per month, and that all bids that do not meet this minimum will be automatically rejected.

The undersigned bidder shall complete the price ceiling list below:

Rental of self-propelled cart	20 ⁰⁰	18holes	10 ⁰⁰	9holes	
Rental of golf clubs	20 ⁰⁰	18holes	15 ⁰⁰	9holes	VIP 35 ⁰⁰
Rental of hand golf cart	4 ⁰⁰	18holes	3 ⁰⁰	9holes	
Rental of golf shoes	5 ⁰⁰	18holes			
Rental of driving range balls per bucket	125	for	21	balls	

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.

Hawaii Golf Equipment & Supplies LLC
Name of Firm
374 Kanaloa Av. Kalaheo, Maui
Address of Firm
1-808-295-7708
Telephone Number
6-30-11
Date Signed

Respectfully submitted,
Arthur J Rego
Signature of Bidder**
Arthur J Rego
Print of Type Name of Bidder
Member Manager
Print or Type Title of Bidder

Hawaii State General Excise Tax License Number: W200712642-01

Please specify type of organization:

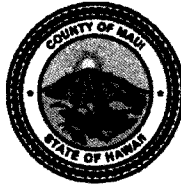
Individual _____ Partnership ☒ Corporation _____

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.

ALAN M. ARAKAWA
Mayor



DANILO F. AGSALOG
Director

MARK R. WALKER
Deputy Director

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

April 15, 2016

CERTIFIED MAIL/RETURN RECEIPT REQUESTED 7014 3490 0001 5493 2754

HAWAII GOLF EQUIPMENT AND SUPPLIES, LLC
DBA WAIEHU PRO SHOP
200 A Halewaiu Road
Wailuku, Hawaii 96793
Attn: Arthur J Rego, Member/Manager

**SUBJECT: GOLF CART/PRO SHOP/DRIVING RANGE CONCESSION AT THE
WAIEHU MUNICIPAL GOLF COURSE
IFB NO. 10-11/P-62; CONTRACT NO. M1009**

Dear Mr. Rego:

Pursuant to the Lease and Concession Agreement dated July 27, 2011, the Contract is hereby extended for the first of two one-year options for the term commencing September 1, 2016 up to and including August 31, 2017. The Concessionaire shall pay the County a net rental of TWENTY THREE THOUSAND AND NO/100 DOLLARS (\$23,000.00) per month.

Please feel free to contact Guy Hironaka, Real Property Manager, at (808) 270-7725 or guy.hironaka@co.maui.hi.us should you have any questions regarding this matter.

Your prompt attention and assistance regarding this matter is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Danilo F. Agsalog", written over a horizontal line.

For **DANILO F. AGSALOG**
Director of Finance


Enclosure

xc: File

**CONFIRMATION OF CONCESSIONAIRE RENT
GOLF CART/PRO SHOP/DRIVING RANGE CONCESSION AT
WAIEHU MUNICIPAL GOLF COURSE
IFB NO 10-11/P-62; CONTRACT M1009
1ST OF 2 CONTRACT EXTENSIONS**

YEAR	TERM	RATE
1	09/01/2016 – 08/31/2017	\$23,000.00 Per Month

CONCESSIONAIRE


BY: ARTHUR J. REGO
Member - Manager


DATE

4-18-16


BY: CATHERINE M. CORDEIRO
Member - Manager

04-18-16

COUNTY OF MAUI


BY: DANILO F. AGSALOG
Finance Director

4-21-16

APPROVED AS TO FORM AND LEGALITY:


BY: JEFFREY UEOKA
Deputy Corporation Counsel

4/19/16

MI017

LICENSE AND CONCESSION AGREEMENT

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 SAVORY PALATE HAWAII LIMITED LIABILITY COMPANY, a Hawaii limited liability company, whose mailing address is Post Office Box 880984, Pukalani, Maui, Hawaii 96788, hereinafter referred to as the "Concessionaire";

WITNESSETH:

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 the food concession at the Waiehu Municipal Golf Course, Wailuku, Maui, Hawaii, Tax Map Key No. (2) 3-2-013-027 (por.) (the "Premises") as described in that certain unrecorded "Invitation for Bids for the Food and Liquor Concession at the Waiehu Municipal Golf Course, Wailuku, Maui, Hawaii, IFB No. 13-14/P71", which is attached hereto as Exhibit "1" and made a part hereof, as follows:

A. Scope of Concession. The Concessionaire will provide restaurant services including the preparation and sale of food and liquor within the Premises. The Concessionaire will also be permitted to operate a catering business and/or vending machines within the Premises. In addition, the Concessionaire may operate a food cart on the golf course premises, but may not install vending machines anywhere outside the Premises.

B. Security. The Concessionaire shall provide either a Security Deposit in the amount of FIVE THOUSAND FOUR HUNDRED TWO DOLLARS (\$5,402.00), which is equivalent to TWO (2) months of the monthly concession fee or shall file a good and sufficient Surety Bond on the form furnished by the County conditioned on the full and faithful performance of the Agreement, which bond shall be in an amount equivalent to TWO (2) months of the monthly concession fee.

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LICENSE AND CONCESSION 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 a food concession in accordance with the Scope of Work described in paragraph A above, agrees to pay in advance, on the 1st day of each and every month, TWO THOUSAND SEVEN HUNDRED ONE AND NO/100 DOLLARS (\$2,701.00) 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 Term of the Agreement shall be FIVE (5) years, commencing on July 1, 2014 up to and including June 30, 2019, unless sooner terminated as hereinafter provided.

E. Terms and Conditions. The Concessionaire shall comply with the terms and conditions contained within the "Invitation for Bids for the Food and Liquor Concession at the Waichu Municipal Golf Course, Wailuku, Maui, Hawaii, IFB No. 13-14/P71", attached hereto as Exhibit "1" and the Covenants, Terms, and Conditions of this Agreement, which are attached hereto as Exhibit "2". Additionally, Concessionaire shall ensure that all employees handling food and beverage must have a valid current food handler's certificate issued by the State Department of Health. Concessionaire shall comply with all laws and regulations related to handling and sale of liquor, including Chapter 281, HRS, and the rules of governing the sale of intoxicating liquor of the County of Maui.

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

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

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LICENSE AND CONCESSION AGREEMENT

Agreement shall control first, the County's General Conditions (Exhibit "2") 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]

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LICENSE AND CONCESSION AGREEMENT

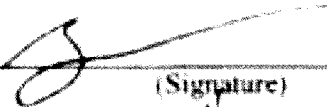
CONCESSIONAIRE EXECUTION PAGE

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

CONCESSIONAIRE:

SAVORY PALATE HAWAII LIMITED
LIABILITY COMPANY

By



(Signature)

Penny Lynn Haunani Davis

(Print Name)

Its

Manager, Agent, Organizer

(Title)

Date

May 15, 2014

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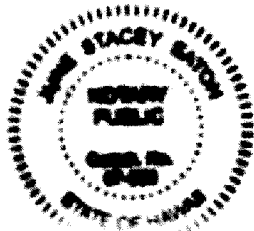
M1017

LICENSE AND CONCESSION AGREEMENT

STATE OF Hawaii)
County of Maui) SS.

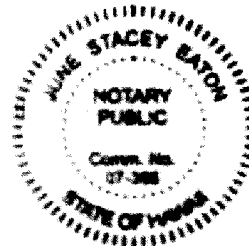
On this 15th day of May, 2014, before me personally appeared Bonny Lynn Thurman Davis to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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



June Stacey Eaton
Notary Public, State of Hawaii
Print Name: June Stacey Eaton
My commission expires: July 29, 2015

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>May 14, 2014</u>	# Pages:	<u>10</u>
Notary Name:	<u>June Stacey Eaton</u>	Judicial Circuit:	<u>2</u>
Doc. Description:	<u>License and Concession Agreement</u>		
Notary Signature:	<u>June Stacey Eaton</u>		
Date:	<u>May 15, 2014</u>		



M1017

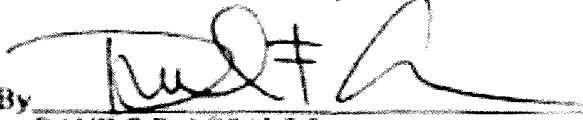
LICENSE AND CONCESSION AGREEMENT

COUNTY EXECUTION PAGE

COUNTY OF MAUI


By 
ALAN M. ARAKAWA
Its Mayor

Date June 17, 2014


By 
DANILO F. AGSALOG
Its Director of Finance

Date JUN 17 2014

APPROVAL RECOMMENDED:


MARK R. WALKER
Deputy Director, Department of Finance
Date MAY 19 2014

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel
SMALL CONTRACTS/very update m1017/communication wps
Date JUN 17 2014

M1017

LICENSE AND CONCESSION AGREEMENT

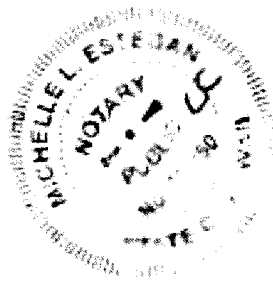
STATE OF HAWAII)

COUNTY OF MAUI)

SS

On this 17th day of June, 2014, before me personally appeared ALAN M. ARAKAWA, to me personally known, who, being by me duly sworn, did say that he is the Mayor 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 7-5.11 and Section 9-18 of the Charter of the County of Maui; and the said ALAN M. ARAKAWA 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.

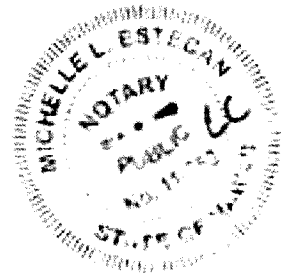


Michelle L. Esteban
Notary Public, State of Hawaii

Print Name: MICHELLE L. ESTEBAN

My commission expires: 8-14-15

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>6/17/2014</u>	# Pages:	<u>40</u>
Notary Name:	<u>MICHELLE L. ESTEBAN</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>License and Concession Agreement</u>		
Notary Signature:	<u>Michelle L. Esteban</u>		
Date:	<u>6/17/2014</u>		



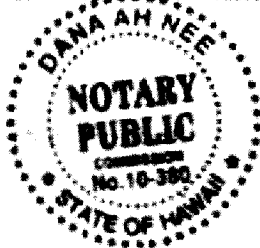
M1017

LICENSE AND CONCESSION AGREEMENT

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 17th day of June, 2014, 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.

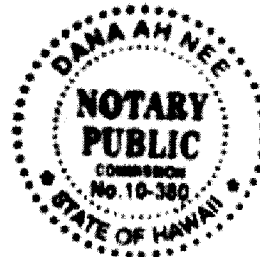


Dana Ah Nee
Notary Public, State of Hawaii

Print Name: DANA AH NEE

My commission expires: NOV 14 2014

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>JUN 17 2014</u>	# Pages:	<u>40</u>
Notary Name:	<u>DANA AH NEE</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>M1017 - License and Concession Agreement between the County of Maui and Solving Palate Hawaii Limited Liability Company</u>		
Notary Signature:	<u>Dana Ah Nee</u>		
Date:	<u>JUN 17 2014</u>		



LICENSE AND CONCESSION AGREEMENT

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 SAVORY PALATE HAWAII LIMITED LIABILITY COMPANY, 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.


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LICENSE AND CONCESSION AGREEMENT

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:

SAVORY PALATE HAWAII LIMITED
LIABILITY COMPANY

By 
(Signature)

Donny Lynn Haurani Davis
(Print Name)

Its Manager, Agent, Organizer
(Title)

Date May 15, 2014

INVITATION FOR BIDS

FOR THE

FOOD AND LIQUOR CONCESSION

AT THE

WAIHEHU MUNICIPAL GOLF COURSE

WAILUKU, MAUI, HAWAII

IFB NO 13-14/P71

INVITATION TO BIDDERS

IFB NO. 13-14/P71

Sealed bids for the Food and Liquor Concession at the Waiehu Golf Course, IFB No 13-14/P71, will be received up to 2:00 p.m. on

March 20, 2014

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

The concession will be awarded for a five (5) year period beginning **July 1, 2014** and ending **June 30, 2019**

Specifications and offer forms may be obtained at the Department of Finance, Purchasing Division, located at 2145 Wells Street (Wells Street Professional Building) Suite 104, Wailuku, HI 96793. A Notice of Intent to submit a bid, and an Application to bid are required to be submitted no later than **March 10, 2014 at 4:30 p.m.**

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 21, 2014
February 23, 2014
February 25, 2014

**Notice of Intention to Bid
For the Food and Liquor Concession
at the Waiehu Golf Course
Maui, Hawaii
IFB 13-14/P71**

Date _____

Mr. DANILO F. AGSALOG
Director of Finance
County of Maui
200 S. High Street
Wailuku, HI 96793

Dear Sir

The undersigned intends to bid for the Food and Liquor Concession at the
Waiehu Golf Course, Maui, Hawaii.

Attached is the fully completed Application to Bid as required under Section 1 of
the Specifications.

Respectively submitted,

Name of Bidder

By _____
Authorized Signature

Title _____

Telephone _____

**This Notice must be filed on or before:
March 10, 2014 at 4:30 p.m.**

OFFER FORM

IFB NO. 13-14/P71

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 Food and Liquor Concession at the Waiehu Golf Course 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, that he has inspected the facility, and that he has factored these uncertainties into the bid

The undersigned bidder bids a fixed rental of \$ _____ per month.

It is understood that the bid upset amount is \$1,500.00 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. 13-14/P71

I. Qualification of Bidders:

Notice of Intention to bid, attached hereto, must be filed by each prospective bidder with the Director of Finance at the office of the Purchasing Division, County Building, before **4:30 p.m. on March 10, 2014.**

Each Bidder shall file, together with the Notice of Intention to Bid, the Application to Bid attached hereto and marked Exhibit B, answered in full and sworn to before a notary, providing evidence of the following minimum qualifications:

- a. Three year's full time experience in operating a restaurant, food concession or food catering business.
- b. Gross income of not less than \$50,000 a year during that three year period from operating a restaurant, food concession, or food catering business.
- c. Evidence of ability to provide a minimum of \$10,000 in liquid working capital or a firm commitment from a financial institution doing business in the State of Hawaii for a loan of \$10,000.

To meet the above requirements, the sole proprietor, or one or more of the partners in a partnership or joint venture, or one or more of the officers in a corporation, shall meet the qualifications as listed in Items (a) and (b) above. Said qualifications may not be met by a corporation, partnership, joint venture, or individual merely by the employment of a manager or person to be in immediate charge of the concession who has had the requisite years and income experience.

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. Should bidder fail to meet the qualifications stated herein or fail to submit the required Notice of Intention to Bid, the Director of Finance may refuse to receive or consider any bid submitted by such bidder.

II. Scope of Concession

The concessionaire will provide restaurant services including the preparation and sale of food and liquor within the concession area. The concessionaire will also be permitted to operate a catering business and/or vending machines within the concession area. In addition, the concessionaire may operate a food cart on the golf course premises, but may not install vending machines anywhere on the course. It is the intention of the County of Maui to limit the specific requirements and the scope of

this concession to allow the concessionaire to operate with maximum flexibility. Variables not specifically addressed in this IFB such as the menu, staffing, etc. shall be determined solely by the concessionaire.

The current concessionaire paid the County of Maui \$1,800.00 per month for the last 5 years.

III. 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 golf course closures, interruptions of play, reduction in, or loss of concession revenue or net income due to construction activity or golf course maintenance. The County reserves the right to schedule and proceed with golf course construction activity and maintenance during the term of the contract. The County also reserves the right to close the course for special events.

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, landslides, fires, floods, epidemics, quarantine restrictions, and storms or other weather related conditions.

Upon the start of the contract, the concessionaire will assume responsibility for the property on an as is basis, and will be responsible for any repairs or modifications in order to maintain or to bring the facility up to standard or to comply with any and all laws and regulations affecting the operation of the facility. The County reserves the right to make repairs or perform maintenance at the facility at its discretion and subject to budgetary constraints.

Inspection of the facility may be made by contacting **Doug Myers, Waiehu Golf Course Superintendant, at 243-7402**. Arrangements should be made well in advance, and any problems coordinating a site inspection should be directed to **Greg King at 270-7488**.

IV. Other Provisions

1. Governing Laws

This IFB shall be bid in accordance with Chapters 102 Hawaii Revised Statutes and Chapter 3-40 of the Maui County Code.

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. The total lease rent is the monthly rent offered x 60 months. 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 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:
Bids less than the upset price of **One Thousand Five Hundred Dollars (\$1,500.00) 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 Waiehu Golf Course Food and Liquor Concession to provide the exclusive services contemplated for a period of five (5) 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. Description of the Premises:
The concession premises covered by this contract is shown in Exhibit "A".

6 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.

7 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 rental as security for the full and faithful performance of the Lease and Concession Agreement by the concessionaire.

8 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 and shall become the property of the County of Maui upon completion.

9 Maintenance and Repair of Concession Area

The concessionaire shall at all times keep and maintain the premises, equipment, utensils, supplies, and all areas used by him or assigned to him in a clean and sanitary condition in conformance with the requirements of the State Department of Health and to the satisfaction of the officer in charge.

If the concessionaire, after receiving written notice from the Director of Finance, fails, within five (5) days after receiving such notice, to maintain, repair, or clean-up the concession area as required, then the contract shall be deemed to have been breached and the County shall have the right to terminate the contract.

The concessionaire shall be responsible for the cost of maintenance and repair work to the concession premises including the cost of repairs or replacements because of damage to the concession premises caused by malicious mischief, vandalism, or unlawful entry. The concessionaire shall also be responsible for the cost of all repair work to the concession premises caused by fire from within the concession premises.

10 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 telephone, water, refuse collection, and electricity charges. 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 unfilled contractual obligations to any Federal, State, or County government agency.

11. 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.

12. 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. All placement and installation shall be made only upon written approval of the Officer in Charge.

13. 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.

14. 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 thereunder, without the prior written approval of the County of Maui.

15. 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.

16. Insurance

The concessionaire shall procure, purchase, and maintain the following

insurance during the term of the Agreement.

- a. Public liability insurance in an amount not less than \$1,000,000 for injury to one person in one accident; and \$1,000,000 for injury to more than one person in one accident.
- b. Property damage insurance in an amount not less than \$100,000.
- c. Fire insurance in an amount equal to 100% of the replacement value of the premises to be established by the insurance appraiser and as approved by the Director of Finance.

Copies of said insurance policies shall be filed with the Director of Finance. Each insurance policy shall contain a clause whereby the insurance company shall agree to give written notice to the Finance Director thirty (30) days prior to cancellation or alteration of said policy. All expenses connected with the procuring of insurance shall be borne by the concessionaire. Insurance policies shall name the County of Maui as an additional insured for its own acts and/or omissions thereon.

17. 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 therefrom, to remove and exclude any and all persons from the premises, to assume full control and management of the administration and operations of the concession, and/or to substitute a suitable operator of the concession 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.

18. 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.

19. 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

20 Term of Agreement

The term of this contract will be from **July 1, 2014 to June 30, 2019** unless otherwise terminated sooner as set forth herein

21 Severability

If any term or provision of this contract is held invalid, the other terms or provisions shall not be 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.

22 Minerals and Waters

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.

23 Rights of way and easements

Such rights of way and easements as County in its sole discretion may from time to time determine for lines, transmission facilities and appurtenances for utilities, electricity, gas, telephone, pipes, water, sewers, drainage, flowage and appurtenances thereto, conveyors of rock and rock products and any other purposes, services and substances whatsoever, including without limitation public access to the shoreline, over, across, under and through the Premises including the right to enter 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, County agrees that County shall restore, at County's expense, any improvements made by Concessionaire which were damaged as a result of such entry to a condition as near as practicable prior to such entry.

24 Acceptance of Rent Not a Waiver

The acceptance of rent by County shall not be deemed a waiver of any breach by Concessionaire of any term, covenant or condition of this Agreement, nor of

County's right to re-enter for breach of covenant, nor of County's right to declare and enforce a forfeiture for any such breach, and the failure of County to insist upon strict performance of any such term, covenant or condition, or to exercise any option herein conferred, in any one or more instances, shall not be construed as a waiver or relinquishment of any such term, covenant, condition or option.

25 Condition of the Premises.

Concessionaire acknowledges that Concessionaire is knowledgeable in concession matters and that Concessionaire has made all of the inspections and investigations necessary or desirable and has accordingly decided to lease the Premises on the basis set forth herein. Concessionaire has inspected the Premises and the current physical condition thereof and shall accept the Premises "as is" and in its condition as of the date of this Agreement. Concessionaire further acknowledges that County has made no representation or warranty, whether express or implied, with respect to the physical condition, state of repair, design, quality, durability, operation or fitness for use of the Premises.

26 County Financial Monitoring.

Within sixty (60) days after the close of each fiscal year, Concessionaire shall file with the Director of Finance an income statement and a balance sheet on the operation of the concession for the prior fiscal year. The income statement shall show detailed operating revenues of the concession, and all operating expenses by type. Failure to file said financial statements as set forth herein shall constitute a material breach of this Agreement and County may thereupon terminate this Agreement.

27 No Use of Hazardous Materials

Concessionaire shall not use, generate, manufacture, treat, handle, refine, produce, store, discharge, release, dispose of or allow to exist on, within, under or about the Premises, any hazardous material, except in full compliance with all applicable hazardous materials laws. Concessionaire shall indemnify and hold County harmless from and against all claims, losses, and liabilities, including reasonable attorneys' fees, incurred by County which may arise out of or be attributable to Concessionaire's use, generation, manufacture, treatment, handling, refining, production, storage, discharge or release of hazardous materials on, within, under or about the Premises. This indemnity shall survive the expiration, termination or assignment of this Agreement.

28 Attachments and Encumbrances.

Concessionaire shall not commit or suffer any act or neglect whereby the Premises, or any improvement thereon, or the estate of Concessionaire in the same, shall become subject to any attachment, lien, charge or encumbrance whatsoever, and shall indemnify and hold harmless County from and against all attachments, liens, charges and encumbrances and all expenses resulting

therefrom

29 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 rents of all improvements and buildings situated on the Premises for all costs, attorney's 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 due are paid.

30 Costs of Litigation.

In case County shall, without substantial fault on its part, be made a party to any litigation commenced by or against Concessionaire (other than condemnation proceedings), Concessionaire shall and will pay all costs and expenses incurred by or imposed on County; furthermore, Concessionaire shall pay all costs and expenses, including reasonable attorneys' fees, which may be incurred by or paid by County in enforcing the covenants and agreements of this Agreement, in recovering possession of the Premises or in the collection of delinquent rental, taxes and any and all other charges

31 Funding

Concessionaire shall be solely responsible for the funding of its improvements, maintenance, and operation of the Premises

32 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, the rental shall be reduced in proportion to the value of the portion of the Premises condemned. 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. Concessionaire shall not by reason of the condemnation be entitled to any claim against County for condemnation or indemnity for leasehold interest and all compensation payable or to be paid for or on account of the leasehold interest by reason of the condemnation shall be payable to and be the sole property of County. Where the portion taken renders the remainder unsuitable for the use or uses for which the Premises was demised, Concessionaire shall have the option to surrender this Agreement and be discharged and relieved from any further liability therefor

33 Right to Enter

County and the agents or representatives thereof shall have the right to enter and cross any portion of the Premises for the purpose of performing any public or official duties; provided, however, in the exercise of such rights, County shall

not interfere unreasonably with Concessionaire or Concessionaire's use and enjoyment of the Premises.

34 Extension of Time

County may in its sole discretion for good cause shown, allow additional time, beyond the time or times specified herein to Concessionaire, in which to comply observe and perform any of the terms, conditions and covenants contained herein, provided, however, that this provision shall not be construed to permit any extension of the aforesaid FIVE (5) year term of this Agreement.

35 Surrender

Concessionaire shall, at the end of said term or other sooner termination of this Agreement, peaceably deliver unto County possession of the Premises, together with all improvements existing or constructed thereon. Furthermore, upon the expiration, termination or revocation of this Agreement, should Concessionaire fail to remove any and all of Concessionaire's personal property from the Premises, County may remove any and all such personal property from the Premises and place said property in storage at the cost and expense of Concessionaire, and Concessionaire does hereby agree to pay all costs and expenses for removal and storage of such personal property.

36 Right to Estoppel Certificates

Concessionaire, within ten (10) days after notice from County, shall execute and deliver to County, in recordable form, a statement certifying in substance that (i) this Agreement represents the entire agreement of County and Concessionaire and is unmodified and in full force and effect, or in full force and effect as modified, and stating the modifications, (ii) the amount of the rental and the amount of any security deposit or prepaid rental, (iii) there has been no transfer of this Agreement nor of Concessionaire's interest therein, and (iv) there are not, to Concessionaire's knowledge, any uncured defaults on the part of County and that Concessionaire has no right of offset, counterclaim or deduction against rent, or specifying such defaults, if any are claimed, together with the amount of any alleged offset, counterclaim or deduction. Failure to deliver the certificate within the ten (10) days shall be conclusive that (i) this Agreement is in full force and effect and has not been modified except as may be represented by County and (ii) there are no uncured defaults in County's performance and Concessionaire has no right of offset, counterclaim or deduction against rental.

37 Modification of Agreement

No waiver or modification of this Agreement or of any covenant, condition, or limitation contained in this Agreement shall be valid unless in writing and duly executed by the party to be charged. No evidence of any waiver or modification shall be offered or received in evidence in any proceeding, arbitration or litigation between the parties arising out of, or affecting the rights or obligations of, the parties to this Agreement, unless such waiver or modification is in writing and duly executed by the party to be charged. The parties further agree that the

provisions of this section may not be waived except as set forth above

38 Conflict

In the event of conflict between this Agreement and the incorporated documents, the terms of this Agreement shall control

39 Hawaii Law

This Agreement shall be construed in accordance with the law of the State of Hawaii

40 Notices

Any notice or demand that a party may or is required to give to the other party to this Agreement shall be in writing and given to such party, addressed to it at the party's address provided on the first page of this Agreement or to such other address as shall be designated by one party in a written notice to the other party. Each such notice or demand shall be effective (a) if given by mail, five (5) days after such communication is deposited in the mails with first class postage prepaid, addressed as aforesaid, or (b) if given by any other means, when delivered at the address specified above

41 Waiver of Jury Trial

The parties mutually waive any and all rights which either of them may have to request a jury trial in any action

42 No Partnership Intended

It is expressly understood that County does not in any way or for any purpose become a partner of Concessionaire in the conduct of its business or otherwise or a joint venturer or a member of a joint enterprise with Concessionaire

43 Provisions Are Covenants and Conditions

All provisions, whether covenants or conditions, on the part of Concessionaire shall be deemed to be both covenants and conditions

44 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

45 Entire Agreement

This Agreement contains the entire agreement between the parties and shall, as of the effective date hereof, supersede all other agreements between the parties. The parties stipulate that neither has made any representation with respect to the subject matter of this Agreement, except such representations as are specifically set forth herein, and each party acknowledges that the party has relied on the party's own judgment in entering into this Agreement. The parties hereto further acknowledge that any payments or representations that may have

heretofore been made by either of them to the other are of no effect and that neither has relied thereon in connection with dealings with the other.

46. Lessee Representation as to Arrearage

Lessee represents and warrants that Lessee is not in arrears in payment of taxes, rents, or other obligations to the County, the State of Hawaii, or the United States of America.

47. No Residential Use

Lessee, its agents, employees and invitees, shall not use the Premises as a temporary or permanent residence.

48. No Industrial or Commercial Uses

Lessee shall not use the Premises for any industrial or commercial uses. Lessee shall not store or house on the Premises any equipment, vehicles, or materials not related to the stipulated use of the Premises.

49. Lessee's Risk

Any and all goods, wares, produce, equipment, and personal property of any kind or description that may be on the Premises at any time during the term of this Agreement, regardless of ownership of such property, shall be at the sole risk and hazard of the Lessee, and County shall not be liable or responsible for any loss thereof or damage thereto caused by theft, vandalism, weather, water, gas, defective electric wiring, fire, or by any other cause whatsoever.

50. Abandonment and Termination

If Lessee abandons or ceases to use the Premises for a period of four (4) or more consecutive months, then all rights granted hereunder to Lessee shall cease and terminate and upon the termination hereof or abandonment or nonuse as aforesaid, Lessee shall, if so requested by County, remove from the Premises all its buildings, improvements, equipment and personal property and shall restore the ground to the like condition in which it was immediately before the installation of such buildings, improvements and equipment. In the event of abandonment or termination or cessation of this Lease, Lessee shall prepare, execute and record an appropriate instrument or instruments terminating its leasehold interest hereunder and removing the cloud on title caused by this Agreement, it being understood that any such abandonment, termination or cessation shall not affect or release any liability of Lessee at such time existing by reason of breach of any of the terms hereof.

51. Conduct of Business

The concessionaire shall conduct his operation in such a manner as to avoid the (1) creation, commission, or maintenance of a nuisance on the premises, or (2)

causing or creation of unusual or objectionable noises, or noxious smoke, gases, vapors and odors.

52. Signs and Advertising

The concessionaire shall furnish, install and maintain signs listing all prices of items sold. Hours of operation must be posted. Before installation, all signs must be approved in writing as to appropriateness, size, design, and location by the officer in charge.

No hawking, solicitation or unauthorized advertising shall be made by the concessionaire or his employees on or outside of the premises or on a public address system.

The concessionaire shall not engage in any or have any form of advertising without the prior written approval of the officer in charge.

53. Grease Trap

The concessionaire shall be responsible for cleaning the grease trap at least once a week.

54. Hours of Operation

The concessionaire shall open and operate said concession at all times during the hours when the Waiehu Municipal Golf Course is open for business. The officer in charge may temporarily waive this requirement during golf tournaments, poor weather, or other conditions that temporarily reduce usage of the food concession by the public.

Exhibit B

**Application to Bid
for the Food and Liquor Concession
Waiehu Golf Course
Maui, Hawaii**

State of Hawaii
County of Maui

Having been first duly sworn and depose the undersigned states that he has the minimum qualifications required under Section 1 of the Specifications and that he is furnishing the following information as proof of his qualifications

- 1 Name of Applicant: _____
- 2 Business Organization:
☐ Individual ☐ Corporation ☐ Partnership
- 3 Principal Office Address: _____

- 4 If a Corporation, answer the following:
 - (a) When incorporated and where: _____
 - (b) When authorized to do business in the State of Hawaii:

 - (c) Name of Officers:
President: _____
Vice President: _____
Secretary: _____
Treasurer: _____
Others: _____

5. If a Partnership, answer the following:

- (a) Where and when organized: _____
- (b) General or Limited Partnership: _____
- (c) When registered in the State of Hawaii: _____
- (d) Partners:

<u>Name</u>	<u>Address</u>	<u>Share</u>
-------------	----------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Name of Individual, or officer(s), or partner(s), and number of years of experience in restaurant, food concession or food catering business:

7. Names, locations, dates of operation of above business:

<u>Name</u>	<u>Address</u>	<u>Dates</u>
-------------	----------------	--------------

_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Gross income from restaurant, food concession, or food catering business from last year of operation:

9. Submit evidence of ability to provide a minimum of \$10,000.00 in liquid working capital or a firm commitment from a financial institution doing business in the State of Hawaii for a loan of \$10,000.00.

State of Hawaii)
) SS>
County of Maui)

On _____, before me appeared _____
to me personally known, who being by me duly sworn or affirmed, did say that such
person(s) executed the foregoing instrument as the free act and deed of such
person(s), and if applicable in the capacities shown, having been duly authorized to
execute such instruments in such capacities

Print Name: _____

Notary Public, State of Hawaii

My commission expires: _____

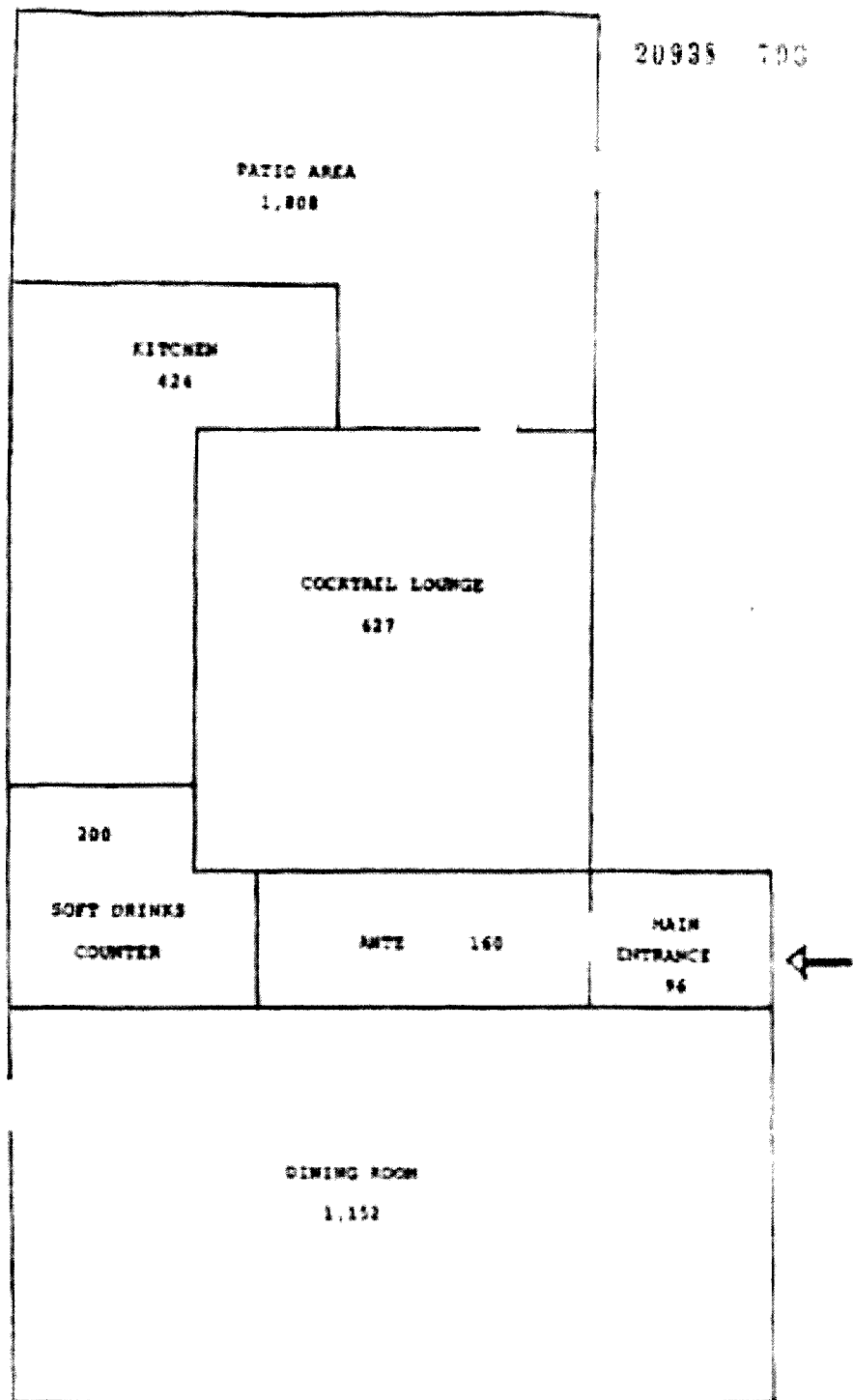


EXHIBIT "2"

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, assessed to said Premises, or any part thereof, including any improvements thereon; 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 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. **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.
10. **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 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.
11. **RULES AND REGULATIONS.** County 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.
12. **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, 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.

13. 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.

14. 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 two (2) 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.

15. 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.

16. 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 an adjustment of the time for performance, the Agreement shall be modified in writing accordingly.

17. 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.

18. 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.

19. 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, 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."

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.

20. 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.

21. **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.
22. **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.
23. **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 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.
- 24. 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.
- 25. 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.
- 26. 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.
- 27. 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.
- 28. 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.

29. **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.
30. **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.
31. **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.
32. **TIME OF THE ESSENCE.** Time is of the essence of this Agreement and all of the terms, provisions, covenants, and conditions hereof.
33. **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.

34. **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 any representations concerning the terms or effects of this Agreement other than those contained herein.
35. **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.
36. **CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
37. **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.

- 38. 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.
- 39. 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.
- 40. 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 EXHIBIT "2"