



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA
DIVISION OF STATE PARKS

INVITATION FOR BID FOR
SEALED BID PROPOSAL
TO PROVIDE A
MOBILE FOOD TRUCK CONCESSION

AT
MĀKENA STATE PARK
ISLAND OF MAUI, HAWAI'I
TMK (2) 2-1-006:030 Portion (Parking Lot Location "A")

IFB NO. SPM25-0101A

APPROVED BY:


Dawn N.S. Chang, Chairperson
Board of Land and Natural Resources

12/9/24

Date

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SIGNIFICANT DATES

Advertisement of Publication IFB No. SPM25-0101A and Application Pick-up	December 16, 17, 18, 2024
Notice of Intention to Bid and Qualifications Questionnaire Due	January 6, 2025
Substantive Review and Qualifications of Applications	January 7 – 10, 2025
Notice of Qualification/Disqualification	January 13, 2025
Sealed Bid Proposal and Bid Deposit Due	2:00 PM HST, January 24, 2025
Opening of the Sealed Bids	3:00 PM HST, January 24, 2025
Notice of Award to the Winning Bidder	January 27, 2025
Estimated Start of Concession Lease	March 1, 2025

SECTION A – SCHEDULE OF SUPPLIES

A.1. NOTICE TO BIDDERS

The State of Hawaii, Department of Land and Natural Resources (“DLNR”), Division of State Parks (“DSP”) is issuing an Invitation for Bids (“IFB”) to qualified parties interested in a Mobile Food Truck Concession Agreement to operate a Mobile Food Truck (“MFT”) Concession pursuant to Chapter 102, Hawaii Revised Statutes (“HRS”), on state-owned lands within the the Mākena State Park situated at Mākena, Kihei, Island of Maui, Hawai‘i TMK: (2) 2-1-006:030 (Portion) (“Premises”), as shown on the concession area map in **Exhibit “A.”** Any party that may be interested in providing a bid may inspect the concession premises by calling DSP at (808) 587-0505 Monday through Friday, 8:00 AM to 4:00 PM Hawaii Standard Time (“HST”) except Federal and State Holidays.

The successful bidder shall have the right to use and occupy the site for operation of a MFT Concession from a vehicle, which shall be removed in its entirety from the Premises each evening. Allowable for sale primarily shall be food items such as plate lunches, sandwiches, non-alcoholic beverages, snacks, ice cream, smoothies, and sundry items as approved in writing by DSP. Additionally, the successful bidder shall support and enable DSP to provide enhanced visitor services while generating revenue, as needed.

Before any prospective bidder may submit a formal Sealed Bid Proposal (“Bid Proposal”), the prospective bidder must meet the minimum qualifications set forth in the IFB and shall submit a completed Qualification Questionnaire and give written notice of intent to bid on the Notice of Intention to Bid form by close of business day HST on January 6, 2025, to the office of DLNR-Division of State Parks, Property Manager, Ms. E. Keiki Kipapa, at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813.

DSP intends to contract two separate MFTs at Mākena State Park, but in different locations within the Park. This IFB is for one MFT only. The IFB for the second MFT will be posted at a later date.

Unless otherwise specified, the IFB, including required forms for bidding such as the General Instructions to Bidders, Qualifications Questionnaire, Specifications, and Intention and Proposal Forms relating to this offering (“IFB No. SPM25-0101A” or “Bid Packet”), may be obtained from DSP Monday through Friday, except Federal and State Holidays, between 8:00 AM and 4:00 PM HST. Requests for these Bid Packet materials may also be made to Ms. E. Keiki Kipapa, DSP Property Manager, by email to earleen.k.kipapa@hawaii.gov.

Prior to permitting any interested party to bid, the DLNR shall satisfy itself of the prospective bidder's financial ability, experience, qualifications, and competence to carry out the terms and conditions of the concession contract that may be awarded. Prospective bidders will be informed whether or not they have been deemed as “qualified.” Qualified bidders will be notified by DLNR that they may prepare and submit a Bid Proposal, as specified in IFB No. SPM25-0101A.

A disqualified bidder may appeal the disqualification by submitting a written appeal to the DSP Property Manager within seven (7) calendar days of receipt of notification of disqualification by DLNR. The appeal shall state the reasons bidder believes disqualification to be improper and may only reference

documentary evidence submitted to DLNR with the original Bid Proposal. No new evidence will be accepted or considered in order to keep all bidders on an equal footing. The appeal shall be addressed to the Chairperson of the Board of Land and Natural Resources (“Chairperson”), whose decision in any such appeal shall be final.

A.2. BID PROPOSALS FROM QUALIFIED BIDDERS

Due Diligence. Bidders are responsible for acquainting themselves with all IFB No. SPM25-0101A documents and for making all necessary investigations and examinations of the physical location and characteristics of mobile food truck concession Premises at the Mākena State Park, especially to familiarize themselves before submitting a Bid Proposal. Failure to do so will not be grounds for any claim that the bidder did not understand the MFT Concession Agreement conditions and will not act to relieve any condition of the Mobile Food Truck Concession Agreement or IFB No. SPM25-0101A documents. The submission of a Bid Proposal shall be considered conclusive evidence that the bidder has made such investigations and examinations.

Bidder’s Communications. The DSP Property Manager shall be the contact for any communications. Should a bidder find discrepancies or ambiguities in, or omissions from the Bid Packet for IFB No. SPM25-0101A, or be in doubt as to their meaning, the bidder shall submit a request for interpretation or correction to DLNR Division of State Parks, c/o DSP Property Manager, Ms. E. Keiki Kipapa, at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813. Any interpretation or correction to the Bid Packet will be made only by written addendum transmitted to all known qualified bidders who received a Bid Packet and timely submitted a completed Notice of Intention to Bid. While verbal requests for clarification may be made, no responses except those made in writing signed by the DSP Property Manager shall constitute an official position of DSP. The State will not be bound by any oral statements or other non-written representations. Only timely submitted, written questions may generate an official response, which response shall be issued solely at DLNR’s discretion. Please do not email or fax any official forms or Bid Proposal materials. Any additional inquiries regarding IFB No. SPM25-0101A, and any requests for special accommodation (e.g., large print materials), should please contact the DSP Property Manager, as specified above.

Bid Proposals. A qualified Bid Proposal must be accompanied by a sufficient “Bid Deposit” required by and in conformance with section 102-6, Hawaii Revised Statutes (“HRS”). The form and amount of the Bid Deposit shall be as stated in the Bid Proposals section of this offering.

Deadline. Bid Proposals and all accompanying materials (including the Bid Deposit) are due and must be received by the close of business, 2:00 PM HST, on January 24, 2025, to DLNR Division of State Parks, c/o DSP Property Manager, Ms. E. Keiki Kipapa, at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813.

Accommodations. Please direct any inquiries regarding the IFB and for any persons requiring a special accommodation (e.g. large print materials) to the DLNR-Division of State Parks Property Manager, Ms. E. Keiki Kipapa, by email to earleen.k.kipapa@hawaii.gov.

Process for Reviewing Bid Proposals. All Bid Proposals received will be time-marked and held by DSP until the hour of bid opening. Any mailed Bid Proposals must arrive before the deadline and are the sole responsibility of the bidder. Any Bid Proposals received after the deadline will be returned unopened to the sender. Bid Proposals shall be submitted in a sealed envelope and shall be clearly labeled as a “Bid Proposal” for “IFB No. SPM25-0101A.” Faxed or emailed Bid Proposal materials will **not** be accepted.

Bid Proposals timely submitted and properly received will be opened after the submission deadline on January 24, 2025, at approximately 3:00 PM HST. In case of a tie of identical high bids made timely by qualified and responsible bidders, DLNR may reject all bids or may award the MFT Concession Agreement to the tied qualified and responsible bidder who is best qualified by experience and financial means, as determined by the Chairperson.

Modifications and/or Cancellation. DLNR reserves the right to amend, modify, or cancel this Invitation for Bids relating to IFB No. SPM25-0101A, readvertise a new request, reject any and all responses in whole or in part, require amendments or modifications to the responses, or waive any requirement in this request, with no liability whatsoever, when doing so is in the best interest of the State. DLNR also reserves the right to amend or supplement requirements and materials, in writing signed by the DSP Property Manager, at any time prior to the bid submission deadline. The Chairperson may cancel IFB No. SPM25-0101A at any time, including after bids have been opened, and the Chairperson may reconsider any decision made in connection with IFB No. SPM25-0101A, including any decision to cancel IFB No. SPM25-0101A, as may be determined by the Chairperson to serve the best interests of the State.



Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources
Department of Land and Natural Resources
of the State of Hawai‘i

Publication Dates: December 16, 17, 18, 2024

1. Maui News
2. Hawaii Tribune Herald
3. Honolulu Star Bulletin
4. Department of Land and Natural Resources, DSP Link:
<https://dlnr.hawaii.gov/dsp/announcements/>

IFB NO. SPM25-0101A
Lot A, Mobile Food Truck

DLNR Division of State Parks
Mākena – Maui District

A.3. NOTICE OF INTENTION TO BID

Date _____

Department of Land and Natural Resources
Division of State Parks
1151 Punchbowl Street, Room 310
Honolulu, HI 96813
Email: earleen.k.kipapa@hawaii.gov

The undersigned intends to bid for the Mobile Food Truck Concession Agreement—relating to IFB No. SPM25-0101A—for the Operation of a Mobile Food Truck for Parking Lot “A” situated at Mākena State Park, Kihei, Island of Maui, Hawai‘i, TMK: (2) 2-1-006:030 (Portion).

Attached is the fully completed Qualifications Questionnaire, as required.

Respectfully submitted,

Name of Bidder
(Legal name of Entity if Applicable)

Authorized Signature

Printed Name and Capacity

Title _____

Address of Bidder: _____

Telephone: _____

E-mail Address: _____

A.4. QUALIFICATIONS

1. QUALIFICATIONS OF BIDDERS:

Only qualified bidders, as determined by DSP authorized representative(s) pursuant to § 102-3, HRS, may submit a Bid Proposal for IFB No. SPM25-0101A. In order to be considered, the entire Qualifications Questionnaire must be completed. At its discretion, DSP or its authorized representative(s) may require prospective bidders to submit answers, under oath, to questions contained in the form of questionnaire setting forth a complete statement of the experience, competence, and financial standing of the prospective bidders. Neither DSP nor its authorized representative(s) charged with administering IFB No. SPM25-0101A and responsive Bid Proposals shall divulge or permit to be divulged identifying information regarding those who submit any Notice of Intention to Bid until after the deadline for the submission of Bid Proposals, as specified herein. All information contained in the answers to questionnaires shall remain confidential, and Qualification Questionnaires of all bidders shall be returned to the bidders after serving their purpose.

By affixing its signature on the Qualifications Questionnaire, the undersigned certifies that the bidder satisfies the minimum qualifications required under IFB No. SPM25-0101A and according to the “Specifications” section of this Bid Packet and that it is furnishing the attached information as proof of its qualifications. All bidders shall submit this Qualifications Questionnaire, the Bid Deposit, and all the required evidence in a single, complete Bid Proposal. Bidders that do not submit a complete Qualifications Questionnaire and the required documentation by the deadline for submission shall be disqualified from bidding.

2. TENTATIVE SCHEDULE:

The expected timeline for processing of the instant IFB is as follows:

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3. QUALIFICATIONS QUESTIONNAIRE:

If more space is needed to fully answer the below questions, please append additional page(s).

3.1. Name of Bidder: _____

3.2. Business Organization: Individual Partnership Corporation Other (if "other" Describe type) _____

3.3. Principal Office Address: _____

3.4. State of Hawaii General Excise Tax ("GET") Number: _____

3.4.1. If exempt from GET, cite applicable statute: _____

3.5. Federal Employer I.D. Number: _____

3.5.1. If exempt from federal taxes, attach documentation of exemption.

3.6. If a Corporation, please answer the following:

Profit Non-Profit

When incorporated and where: _____

When authorized to do business in the State of Hawaii: _____

Name of Officers:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Other(s): _____

Principal Stockholders:

Name and Address

% of Stock held

(1) _____

(2) _____

(3) _____

(4) _____

3.7. If a Partnership, please answer the following:

When and where organized: _____

General or Limited Partnership: _____

When registered in the State of Hawaii: _____

Partners:

	<u>Name and Address</u>	<u>Share</u>
(1)	_____	_____
(2)	_____	_____
(3)	_____	_____
(4)	_____	_____

3.8. If “other” type of business entity, please describe:

What type of business: _____

Where and when organized: _____

When registered in State of Hawaii: _____

List Names of Members/Owners/Managers/etc. (including titles and addresses):

3.9. Attach a description and evidence of a minimum of two-years’ experience of the bidder in the ownership and/or operation of a MFT Concession, restaurant, food concession, food catering business or operations, or related business similar to that described in IFB No. SPM25-0101A, including the number of years of experience, business name, business address, and dates of operation, as well as a recent (within the past 3 months) photograph of the vehicle the bidder intends to be used if selected for the Mobile Food Truck Concession Agreement described herein.

3.10. Provide evidence of the bidder’s ability to procure mobile food equipment that will meet the minimum requirements of IFB No. SPM25-0101A. Attach any information sheet showing but not limited to design and specifications, anticipated costs, and bidder’s financial means of procuring the equipment.

3.11. Has the bidder ever defaulted or been terminated on a State of Hawai‘i contract/agreement or defaulted on real property taxes? If yes, give details on a separate sheet.

Yes No

3.12. Have any leases, contracts, or agreements for the operation of any restaurants, food concessions or similar businesses owned and operated by the bidder ever been cancelled? If yes, give details on a separate sheet.

Yes No

3.13. Has the bidder ever been cited for or found to be in violation of City, County, Federal and/or State of Hawai‘i law during the previous two-year period? If yes, give details on a separate sheet.

Yes No

- 3.14. Attach satisfactory evidence to support the financial ability of the bidder to operate and maintain a MFT Concession. Minimum requirements include income and expense statements, Federal tax returns and balance sheets, from the past two years.
- 3.15. Attach at least two outside references whom the DSP may contact to confirm the bidder's qualifications to operate a MFT. Provide names, contact information, and the relationship or experience with each reference.
- 3.16. Attach copy of State and Federal tax clearance.
- 3.17. Attach evidence of annual gross income indicating a successful business during the two immediately preceding fiscal years.
- 3.18. Attach evidence of sufficient liquid working capital or a firm written commitment from a financial institution for a sufficient loan.
- 3.19. By affixing a signature on the following page, the bidder hereby consents to and authorizes the DSP to confirm all or any of the foregoing information with any financial institution or any other source necessary.
- 3.20. By affixing a signature on the following page, the bidder certifies that it has or will have a State Permit to serve food, and a certified kitchen according to the State Department of Health.
- Bidder has the State permit to serve food and a certified kitchen (attach copy).
 Bidder will obtain the State permit to serve food and a certified kitchen as a prerequisite of the final issuance of the concession agreement.
- 3.21. Attach a list of principal items to be on the proposed menu, including the approximate cost of each item that will be charged to the customers to be approved by the DSP Property Manager, as well as any sundry items to be sold secondary to food and non-alcoholic beverage, if applicable. The Administrator of DSP reserves the right to request that a bidder revise its menu, including but not limited to pricing. If DSP determines that revisions are needed, the bidder will be contacted by the DSP Property Manager at the contact information provided by the Bidder.
- 3.22. Attach a list of days and hours of intended operations, including proposed holiday closure.
- 3.23. As of the date of submission, does the bidder have in its possession a fully equipped mobile vending concessions vehicle?
- Yes. Bidder has attached picture(s) of the proposed MFT Concession vehicle, whose License Plate number is: _____.
 No, but by affixing a signature on the following page, bidder affirms it is able to obtain in Hawaii a fully equipped mobile food concession vehicle necessary to perform the required food and beverage services for timely commencement of a mobile food concession operation.
- 3.24. Bidder must obtain all insurance policies required in the "Specifications" section of this IFB as a prerequisite of the final execution of the MFT Concession Agreement.
- 3.25. Insurance Coverage
Bidder's Business Address: _____

Telephone No. and Email: _____
Contact Person: _____

Insurance coverage is (or will be) carried by:

	<u>Carrier</u>	<u>Policy No.</u>	<u>Agent</u>
Commercial General Liability:	_____	_____	_____
Automobile Liability:	_____	_____	_____
Workers' Compensation:	_____	_____	_____
Temporary Disability Insurance:	_____	_____	_____
Prepaid Health Care:	_____	_____	_____
Unemployment Insurance:	_____	_____	_____

3.26. Bidders may attach any other information they wish to further describe their qualifications.

The undersigned swears that the foregoing information and attached supporting documentation are true and correct to the best of his/her/its/their knowledge and belief.

Dated this _____ day of _____, 2025, at _____

Respectfully submitted,

Name of Bidder

Authorized Signature*

Print Name

Title

***SIGNATURE MUST BE
ACKNOWLEDGED BY A
NOTARY PUBLIC USING
THE FORM PROVIDED ON
THE FOLLOWING PAGE**

A.5. BID PROPOSAL

By affixing its signature below, the undersigned bidder declares that it has carefully examined the entire Bid Packet for the MFT Concession Agreement in connection with IFB No. SPM25-0101A and hereby makes application for the concession as described therein.

The undersigned bidder understands that if awarded the MFT Concession Agreement, the rates that bidder establishes for the sale of food and other items shall be within the range charged for the same quantity of goods and services at comparable facilities or types of business. It is therefore understood that the bidder has taken this into consideration in calculating its bid.

The undersigned bidder understands that the “Concession Rent,” as described in the “Specifications” section of this Bid Packet, shall be paid monthly on the first day of every month, and the interest rate on any unpaid or delinquent rentals shall be at one per cent (1%) per month.

If monthly rent is not received at the above address on or before the first day of the month for which it is due, then a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment shall be assessed and payable. The service charge is in addition to interest on unpaid or delinquent rentals. Interest shall not accrue on the service charge.

The undersigned bidder understands that the duration of the MFT Concession Agreement shall be thirty-six (36) months.

The undersigned bidder agrees that, if awarded the MFT Concession Agreement, it will enter into a Contract with the Department of Land and Natural Resources in accordance with the terms and conditions set forth in the Bid Packet for IFB No. SPM25-0101A, this Bid Proposal, and official addenda to the attached Specifications issued by the Department of Land and Natural Resources, if any.

In accordance with § 102-6, HRS, all Bid Proposals must be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration (Bid Deposit), payable to “DSP, Department of Land and Natural Resources,” located at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813. The Bid Deposit shall be in a sum not less than five percent (5%) of the amount of the total Bid; provided that when the Bid exceeds \$50,000, the Bid Deposit shall be in a sum not less than \$2,500 plus two percent (2%) of the amount in excess of \$50,000. The Bid Deposit for Bids of \$50,000 or less is determined by multiplying the monthly Concession Rent x 36 (months) x 5%. The return of Bid Deposits shall be handled in accordance with § 102-7, HRS.

The undersigned bidder submits:

- | | | |
|--|---------------------------------------|--|
| <input type="checkbox"/> Cashier's Check | <input type="checkbox"/> Surety Bond | <input type="checkbox"/> Other, as allowed under |
| <input type="checkbox"/> Certified Check | <input type="checkbox"/> Legal Tender | HRS § 102-6: _____. |

for its Bid Deposit in the amount of _____ Dollars (\$_____)
as required and made payable to “DSP, Department of Land and Natural Resources,” located at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813. An insufficient Bid Deposit may lead to

disqualification of bidder.

- A. The MFT Concession Agreement fee to be paid to the DSP, DLNR each month under the Contract—the monthly “Concession Rent”—shall be the minimum monthly payment.
- B. The Concessionaire shall pay to DSP, DLNR on a monthly basis in advance, without notice or demand, the minimum monthly payment, on or before the first (1st) day of the month preceding the month for which the fee is applicable and due. The first monthly payment shall be made upon execution of the Contract.
- C. All payments due to the Division of State Parks, DLNR shall be made payable to “DSP, Department of Land and Natural Resources,” located at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813, in a form acceptable to DSP, and as specified in IFB No. SPM25-0101A. Failure to make payment when due shall constitute a breach of the MFT Concession Agreement and shall be sufficient grounds for termination of the Contract by DLNR.

The Concession Rent Payment is to be made in advance monthly. The duration of the MFT Concession Agreement shall be for thirty-six (36) months, effective beginning March 1, 2025, and ending February 29, 2028. Operations beginning March 1, 2025, at the earliest, may commence only after each of the following has occurred: (1) final execution of the MFT Concession Agreement by all parties; (2) receipt by DLNR of the first month’s concession rent; (3) receipt by DLNR of the performance bond or equivalent; and (4) receipt by DLNR of the required certificate of insurance. Regardless of the start date for operations, the Contract is effective beginning March 1, 2025.

The undersigned bidder bids a Concession Rent Payment of:

_____ Dollars (\$ _____) per MONTH.
Note: This cannot be lower than one-thousand dollars (\$1,000.00) per monthly concession rent payment.

By affixing a signature on the following page, the bidder acknowledges the following:
It is understood and agreed that the DLNR has the right to cancel this Invitation for Bid for Sealed Bid Proposal, to extend or modify any application requirements, to accept or reject any or all bids, and to waive any defects, if such extension, acceptance, rejection, or waiver is deemed by the Chairperson to be in the best interest of the State.

IFB NO. SPM25-0101A
Lot A, Mobile Food Truck

DLNR, Division of State Parks
Mākena – Maui District

Person to Contact if Awarded to Bidder: _____

Address of Bidder: _____

Telephone: _____ Email (optional) _____

State of Hawaii General Excise Tax License Number if any: _____

Federal Employer Identification Number: _____

Type of Organization: _____ Individual; _____ Partnership; _____ Corporation; _____ Other: _____

State of Incorporation: _____ Hawai'i; _____ Other (Please specify: _____)

Respectfully submitted

Name of Bidder

Authorized Signature*

Print Name

Title

*SIGNATURE
MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

FOR OFFICE USE ONLY:

Accepted by: _____
Department of Land and Natural Resources

Print Name: _____ Date: _____

A.6. GENERAL INSTRUCTIONS TO BIDDERS

1. BIDDER QUALIFICATIONS:

Prospective bidders must be capable of carrying out the terms and conditions of the contract that may be awarded, for which bids are being called.

- 1.1. Each prospective bidder must file a Notice of Intention to Bid and the completed Qualifications Questionnaire to DLNR, Division of State Parks c/o Ms. E. Keiki Kipapa, 1151 Punchbowl Street, Room 310, Honolulu, HI 96813, no later than close of business day (HST) on January 6, 2025. Emailed and Faxed documents will not be accepted.
- 1.2. The Qualifications Questionnaire, properly executed and notarized, shall be reviewed by the DSP Property Manager or her authorized representative(s) to determine whether the prospective bidder's experience, competence and financial standing meet the minimum qualifications set forth in the Qualifications Questionnaire. Those qualifications include:
 - 1.2.1. Two (2) years' full-time experience in owning and operating a MFT, restaurant, food concession, food catering business, or related business;
 - 1.2.2. Sufficient annual gross income indicating a successful business during the two (2) immediately preceding fiscal years;
 - 1.2.3. Sufficient liquid working capital or a firm commitment from a financial institution for a sufficient loan;
 - 1.2.4. Bidder must have the financial ability to carry out the terms of the MFT Concession Agreement;
 - 1.2.5. Bidder must demonstrate that it currently holds or that it will hold the required permit(s) and/or certification(s) necessary to comply with State and County laws; and
 - 1.2.6. Bidder must verify that it has not been found to have violated any relevant Federal, State, or County law within the prior two (2) years.
- 1.3. Tax Clearances. Bidder agrees that, if selected, the bidder will register with Hawaii Compliance Express and receive certification of vendor compliance to fulfill the requirements of this section.
- 1.4. To meet the minimum qualifications, the bidder, whether an individual, corporation, partnership, or joint venture, shall be presently doing business under the same organizational structure and name, as identified in the Notice of Intention to Bid and the Qualifications Questionnaire, while meeting the minimum qualifications as listed above. The bidder's qualifications may not be met on behalf of the bidder by anyone other than the bidder (such as an employee, officer, partner, joint venture, or person to be in immediate charge of the concession who has had the requisite years and income experience).
- 1.5. If upon review of the Qualifications Questionnaire, the prospective bidder appears not fully qualified or able to carry out the terms and conditions of the contract that may be awarded, the State shall afford the prospective bidder an opportunity to be heard.

- 1.6. Failure to complete every part of the Qualifications Questionnaire or to submit all materials requested in the Qualifications Questionnaire and the written Notice of Intention to Bid within the prescribed time is sufficient cause to disqualify a prospective bidder from submitting a Bid Proposal.
- 1.7. All information contained in the responses to the Qualifications Questionnaire for IFB No. SPM25-0101A shall remain confidential until the Contract is awarded, and Qualifications Questionnaires of all bidders shall remain the property of the State of Hawai‘i.
- 1.8. Prospective bidders who qualify to submit an offer will be so informed. Prospective bidders who do not qualify to submit an offer will be so informed and may request an opportunity to be heard by DLNR. If upon review of the Qualification Questionnaire and the terms and conditions of the MFT Concession Agreement that may be awarded the prospective bidder is determined to be unqualified, DLNR shall afford the prospective bidder an opportunity to be heard upon request. Any such request to be heard shall be made in writing and received by the Division of State Parks, Department of Land and Natural Resources, 1151 Punchbowl Street, Room 310, Honolulu, HI 96813 within seven (7) calendar days of receipt of notification of disqualification by DLNR. The prospective bidder shall state reasons why it believes the rejection was improper and shall refer to supporting evidence in the documents provided to DLNR to support such reasons. The Chairperson shall make a final determination regarding qualification. Disqualification is discussed further in Section A.6.3, below.

2. FILING OF BID PROPOSALS, OPENING, AND RECORDING OF BIDS

- 2.1. Form of Bids. All bids shall be submitted on the official IFB forms in the Bid Packet and shall be received at Division of State Parks, Department of Land and Natural Resources 1151 Punchbowl Street, Room 310, Honolulu, HI 96813, no later than 2:00 PM HST on January 24, 2025, at which time the bids shall be opened by the appropriate personnel at approximately 3:00 PM HST the same day.
- 2.2. Bid Proposals submitted on other than the official IFB No. SPM25-0101A forms, or which modify, add, or delete any term, consideration, or condition of IFB No. SPM25-0101A shall be rejected.
- 2.3. Bid Deposit. In accordance with § 102-6, HRS, all Bid Proposals must be accompanied by a deposit of legal tender or a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or National Credit Union Administration (Bid Deposit), payable at sight to "DLNR, Division of State Parks," located at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813. The Bid Deposit shall be in a sum not less than five percent (5%) of the amount of the total Bid; provided that when the Bid exceeds \$50,000, the Bid Deposit shall be in a sum not less than \$2,500 plus two percent (2%) of the amount in excess of \$50,000. The Bid Deposit for bids of \$50,000 or less is determined by multiplying the monthly Concession Rent x 36 (months) x 5%. The return of Bid Deposits shall be handled in accordance with § 102-7, HRS.
- 2.4. Award of a Contract for the MFT Concession Agreement, if any, shall be made to the highest qualified and responsible bidder. In case of a tie of identical high bids by qualified and responsible bidders, DLNR may reject all bids or may award the MFT Concession Agreement to the tied qualified and responsible bidder who is best qualified by experience and financial means, as determined by the Chairperson.

- 2.5. Bidders are responsible for acquainting themselves with all IFB documents and to make all necessary investigations and examinations of the Premises, especially the MFT Concession Area, and shall judge for themselves all of the circumstances that might affect their bid. Failure to do so will not be grounds for any claim that the bidder did not understand the conditions of the IFB and will not act to relieve any condition of the MFT Concession Agreement or other IFB documents. The submission of a Bid Packet shall be considered conclusive evidence that the bidder has made such investigations and examinations and consents to all IFB conditions.

3. DISQUALIFICATION OF BIDDERS

- 3.1. Any one or more of the following causes will be considered as sufficient basis for the disqualification of a bidder and the rejection of the Bid:
 - a. Lack of proper financial ability, equipment and/or sufficient experience to perform the work as revealed by the Qualifications Questionnaire (Section A.4, Qualification of Bidders);
 - b. Evidence of collusion among bidders;
 - c. Being in arrears on existing contracts with the State of Hawaii, or having defaulted on a previous contract with the State of Hawaii;
 - d. Delivery of Bid after the deadline specified;
 - e. If the Bid shows any erasures without initials, or additions to, or modifications of, or deletions of, any term, consideration or condition set forth in any of the IFB No. SPM25-0101A documents;
 - f. If the Bid shows irregularities or defects of any kind;
 - g. If the Bid is conditional or incomplete;
 - h. If any document included in the Bid Packet that requires signature and/or notarization is unsigned and/or is not properly notarized;
 - i. If the Bid Deposit to accompany the Bid Packet is not received;
 - j. If the Bid Deposit is received separately from the Bid Packet and is not identifiable as guaranty for a specific Bid Packet or is received after the specified submission deadline.
- 3.2. No bidder may withdraw or revise any Bid Packet for a period of sixty (60) calendar days after the time fixed for submission of completed Bid Packets.
- 3.3. A successful bidder who executes a Contract for the MFT Concession Agreement described herein shall be referred to hereinafter as the “Concessionaire.”
- 3.4. The executed MFT Concession Agreement shall be referred to as the “Contract.”

4. FAILURE TO EXECUTE CONTRACT

- 4.1. If the bidder to whom a MFT Concession Agreement is awarded fails or neglects to execute the Contract therefore and to furnish satisfactory security as required by chapter 102, HRS, within

ten (10) days after notification of the award, or within such further time as DLNR may allow, the bidder shall pay the amount of its Bid Deposit to the State.

- 4.2. As a result, the DLNR may then award the Contract to the next highest qualified, responsive, responsible bidder, or may call for new submissions.

5. ASSUMPTION OF RISK

- 5.1. The Concessionaire and its employees and agents shall assume the risk of any loss or damage to their property left on the Premises.
- 5.2. Neither the DLNR nor its officers, agents, employees, or other authorized representative(s) shall be responsible or liable for any loss of, or damage to, the aforesaid property while on the Premises, regardless of the manner in which any such loss or damage is sustained.

6. ASSIGNMENTS

- 6.1. The Concessionaire shall not sublet the Premises, subcontract, assign, hypothecate, mortgage, or otherwise encumber the Contract or any or all of the Concessionaire's rights and obligations thereunder, without prior written consent of the Board of Land and Natural Resources ("Board").
- 6.2. Any transfer, assignment, subcontract, hypothecation, or mortgage so made without such written consent shall be automatically null and void and shall constitute sufficient cause to terminate the Contract at the sole discretion of the Board's Chairperson.

7. DAMAGE OR DESTRUCTION

- 7.1. In instances of damage or destruction or inoperability to the Premises or to any part thereof, the Board shall determine if such damage or destruction or inoperability is repairable and would serve the best interests of the State. Under no circumstances shall the DLNR be obligated, including under the terms of the Contract, to repair or reconstruct any damage or destruction or inoperability to the Premises.
- 7.2. If DLNR elects to repair or reconstruct any portion of the Premises damaged or destroyed or inoperable, it shall determine the scope and schedule of the work to be done and shall proceed with the reconstruction or repairs. To the extent that any portion of such damage or destruction or inoperability is caused by any acts or omissions attributable to the Concessionaire, either in whole or in part, the Concessionaire shall be liable to the Board for the cost of reconstruction and repairs; provided that, irrespective of the cause of any damage or destruction to the permanent improvements, equipment and trade fixtures constructed or installed in or on the MFT Concession Area by the Concessionaire, the DLNR reserves the right to determine the scope and schedule of the replacements or remedial work to be done, and the Concessionaire shall have the duty to proceed with those replacements or repairs at its own cost and expense.
- 7.3. When damage or destruction or inoperability to the Premises occurs through no fault of the Concessionaire, and when, because of such damage, destruction, or inoperability, the Concessionaire is unable to operate the MFT Concession, as determined by the DLNR, the Concessionaire shall be excused from performance of the Contract, and all payments of Concession Rent shall be paid up to the date of occurrence of such damage, destruction, or inoperability, and thereafter the Concessionaire shall be excused from payment of Concession Rent until such time as such damage, destruction, or inoperability is remedied sufficiently in the

opinion of the DLNR, so as to allow the Concessionaire to again operate the MFT Concession. If the Board, within six (6) months after the date of the damage, destruction, or inoperability, elects not to remedy such damage, destruction, or inoperability and the Concessionaire is unable to operate the MFT Concession at any time during said six (6) month period because of such damage, destruction, or inoperability, the Concessionaire may terminate the Contract by giving written notice thereof to the DLNR.

8. BREACH OF CONTRACT, BANKRUPTCY, INSOLVENCY

- 8.1. In the event the Concessionaire shall fail to timely pay the Concession Rent, regardless of whether the delinquent payment is separately demanded, or in the event the Concessionaire does not provide the MFT Concession services outlined in these IFB No. SPM25-0101A documents to the complete satisfaction of the Board, or if the Concessionaire shall fail in any other respect to faithfully observe or perform any condition or covenant of the Contract and such non-performance is not excused in writing by the Board, or if the Concessionaire shall become bankrupt or insolvent, or if the Concessionaire should file a petition for dissolution, or file any debtor proceedings or take any proceedings of any kind or character whatsoever under any provisions of the Federal Bankruptcy Code seeking any readjustment, arrangement, postponement, composition or reduction of Concessionaire's debts, liabilities or obligations, or if any proceedings under the Federal Bankruptcy Code shall be taken against the Concessionaire and the same shall not be frivolous, or if the Concessionaire shall abandon the Premises or suffer the Contract or interest thereunder to be taken under any writ of execution, then the State may at once enter upon the MFT, MFT Concession Area, or any part thereof, in the name of the State, and at its option terminate the Contract and thereupon either have the MFT removed from the Premises at Concessionaire's sole cost and expense or take possession of the MFT, MFT Concession Area, or any part thereof, all permanent improvements, if any, and all equipment thereon and thereby become wholly vested with all right, title and interest of the Concessionaire and of those claiming under it, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby, and without prejudice to any other remedy or right of action which the State may have for arrears of rent or for other or preceding breach of covenant of the Contract on the part of the Concessionaire to be observed or performed.
- 8.2. If the State terminates the Contract for cause, all costs and charges incurred by the State, together with all revenues due under the Contract, will be added to any money due or which would or might have become due from the Concessionaire had the Concessionaire been allowed to complete the work contemplated by the Contract. The Concessionaire shall pay to the DLNR all such sums which would have been payable to the State under the Contract.

9. CONDEMNATION

- 9.1. In the event the whole of the Premises (Mākena State Park), or any part thereof, is taken pursuant to the power of eminent domain, or in the event any partial taking of the same shall render the Premises, or the remainder of the same, insufficient for the operation of the MFT Concession pursuant to the MFT Concession Agreement, the Contract shall terminate as of the date of possession by the condemner; provided that if only a portion of the MFT Concession Area or the Premises (Mākena State Park) shall be condemned without rendering the remainder thereof unsuitable for the operation of the MFT Concession, the monthly Concession Rent payment shall be reduced pro-rata as of the date possession is taken.

- 9.2. All compensation and damages payable by reason of the condemnation of the MFT, the MFT Concession Area, or any part of Mākena State Park shall be payable to the Board. With respect to such condemnation, if any, the Concessionaire expressly waives all claims it may have for damages.

10. TERMINATION

- 10.1. The Board reserves and shall have the right, at any time during the term of the Contract, in its sole discretion and for any reason, to terminate or cancel the Contract.
- 10.2. The Board shall give the Concessionaire written notice of any cancellation or termination no less than sixty (60) calendar days prior to the effective date of such cancellation or termination.

11. SURRENDER OF PREMISES UPON TERMINATION

- 11.1. On the date of cessation of the Contract, whether such cessation be caused by termination, expiration or otherwise, the Concessionaire shall either have the MFT removed from the Premises at Concessionaire's sole cost and expense or it shall peaceably surrender and deliver to the Board possession of the MFT, MFT Concession Area, Premises, permanent improvements, if any, and all equipment thereupon, promptly and in good order, operating condition and repair, reasonable wear and tear resulting from Concessionaire's use of the Premises and damage from causes over which the Concessionaire had no control excepted.
- 11.2. Upon cessation of the Contract, the Concessionaire shall remove from the Premises, under the supervision of DLNR or its representative(s), its merchandise, removable equipment and other personal property in such a manner as to cause no damage to the MFT Concession Area or to the Premises, and in the event of any such damage during removal, the Concessionaire agrees to, at its own cost and expense, repair or otherwise remedy the same to the satisfaction of the Board.
- 11.3. If the Concessionaire fails or neglects to remove all or any portion of its merchandise, equipment and/or personal property within fifteen (15) calendar days after cessation of the Contract, the Board, at its sole option, may either remove and/or dispose of the same and charge the full cost of such removal and/or disposal to the Concessionaire, which the Concessionaire agrees to pay, or DLNR may consider the same to be abandoned and take title thereto in the name of the Board, and the Concessionaire agrees to pay for any costs incurred by the DLNR for doing so.

12. NOTICES

- 12.1. Wherever required, notices to the Board shall be sufficient if sent by certified mail, postage prepaid, addressed to the DSP Property Manager or her authorized representative(s) at the address identified in Section A.2 of this Bid Packet, or to such other address as the Board may from time to time designate in writing with reasonable notice.
- 12.2. Notices to the Concessionaire shall be deemed sufficient if sent by certified mail, postage prepaid, to the Concessionaire at its address herein provided or to such other address as the Concessionaire has informed the DSP Property Manager in writing.

13. INDEPENDENT CONTRACTOR

- 13.1. The Concessionaire is deemed to be an Independent Contractor and not the agent, employee, partner, or joint venture of the DLNR. Services performed under the Contract shall not constitute nor be construed as employment with the DLNR.
- 13.2. The Concessionaire intentionally, voluntarily, and knowingly assumes the sole and entire liability to its employees, agents, or other persons for all loss, damage or injury caused, in whole or in part, by the acts or omissions Concessionaire, or Concessionaire's officers, contractors, employees, agents, any affiliates, and its assigns, if any ("employees") in the course of their employment.

14. COSTS OF ENFORCEMENT AND LITIGATION

- 14.1. In the event the DLNR shall, without any fault, be made a party to any litigation other than condemnation or like proceedings commenced by or against the Concessionaire arising out of the Concessionaire's use or occupancy of the Premises, or attributable to any structure or objects placed thereupon or therein by the Concessionaire under the Contract, then the Concessionaire shall pay all damages, fines, costs, and reasonable attorneys' fees incurred by or imposed upon the DLNR in connection with such litigation.
- 14.2. The Concessionaire shall also pay all costs and reasonable attorneys' fees which may be incurred or paid by the DLNR in enforcing the covenants and provisions of the Contract, including the cost(s) associated with collection of delinquent rental payments, taxes, and other charges.

15. AMENDMENTS

- 15.1. The Contract shall not be varied in its terms or conditions except by an instrument in writing executed subsequently hereto by both parties to the Contract.

16. NON-LIABILITY OF INDIVIDUALS

- 16.1. No officer or employee of the State of Hawai'i, including any member of the Board acting pursuant to section 662-1, HRS, shall be individually or personally liable to the Concessionaire under any term or provision of its Contract, or because of the officer or employee's execution or attempted execution of the Contract, or because of any breach, or attempted or alleged breach thereof by the Board or any other officer or employee of the State of Hawai'i, when acting within the scope of employment.

17. LAWS TO BE OBSERVED

- 17.1. The Concessionaire shall observe, perform, and comply or require compliance with all laws, ordinances, rules, and regulations of the United States, the State of Hawai'i, the County with jurisdiction on island where the MFT Concession is located, and any department or agency thereof, which may in any manner apply to the installation of the MFT Concession, or the operation and maintenance of the MFT Concession.
- 17.2. References to all laws, ordinances, rules, and regulations shall include any amendments thereto.

18. WAIVER OF VIOLATIONS

- 18.1. It is expressly understood and agreed that no waiver granted by the Board of any violation of any promise, term, or condition of the Contract shall constitute or be construed as a waiver of the promise, term, or condition, or of the right to enforce the same as to any other or further violation.

19. GOVERNING LAW

- 19.1. The Contract shall be construed and governed by the laws of the State of Hawai‘i.
- 19.2. Any litigation in connection with the Bid Packet, the IFB for MFT Concession Agreement described herein, and/or the Contract shall be litigated only in a court of competent jurisdiction located in the State of Hawai‘i.

20. BIDDERS' QUESTIONS

- 20.1. For the purpose of the MFT Concession Agreement, the DSP Property Manager shall be the contact for any communications.
- 20.2. Should a bidder find discrepancies, ambiguities in, or omissions from the Bid Packet for IFB No. SPM25-0101A, or if a bidder should be in doubt as to their meaning, the bidder shall submit a request for interpretation or correction to DLNR Division of State Parks, c/o DSP Property Manager, Ms. E. Keiki Kipapa, at 1151 Punchbowl Street, Room 310, Honolulu, HI 96813.
- 20.3. Any interpretation or correction to the Bid Packet will be made only by written addendum transmitted to all known qualified Bidders who received a Bid Packet and timely submitted a completed Notice of Intention to Bid. While verbal requests for clarification may be made, no responses except those made in writing signed by the DSP Property Manager shall constitute an official position of the DLNR. The State will not be bound by any oral statements or other non-written representations. Only timely submitted, written questions may generate an official response, which response shall be issued solely at DLNR's discretion.

A.7. SPECIFICATIONS

1. DEFINITIONS AND INTERPRETATION

Defined Terms. As used herein, the term:

- 1.1. “**ADA**” means the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*
- 1.2. “**Bid Deposit**” means a financial deposit required by and in conformance with section 102-6, HRS. The form and amount shall be as stated in the Bid Proposals section of this offering.
- 1.3. “**Bid Proposal**” means a sealed bid containing all materials required herein.
- 1.4. “**Bid Packet**” or “**IFB NO. SPM25-0101A**” means the Specifications, General Instructions to Bidders, Qualification Questionnaire, Intention and Proposal Forms relating to IFB No. SPM25-0101A.
- 1.5. “**Bidder**” means a qualified, responsive, and responsible bidder.
- 1.6. “**Board**” or “**BLNR**” means the Board of Land and Natural Resources of the State of Hawai‘i, or its successor or authorized representative(s).
- 1.7. “**Chairperson**” means the Chairperson of the Board or her designated representative(s).
- 1.8. “**Concession**” means the grant to a person or entity of the privilege to operate a mobile food truck concession at a state park for the State of Hawaii Department of Land and Natural Resources, Division of State Parks, in accordance with the invitation for bid for the MFT Concession Agreement related to Contract No. SPM25-0101A.
- 1.9. “**Concessionaire**” or “**Contractor**” or “**Principal**” means the successful bidder or party entering into the Contract for the MFT Concession Agreement with the Department of Land and Natural Resources for the privilege of operating the MFT Concession described in the Bid Packet. The term shall also include the Concessionaire’s successors, assigns or legal representatives, and its agents, officers, managers, and employees where the context is appropriate or requires.
- 1.10. “**Concession Rent**” means the minimum monthly payment.
- 1.11. “**Contract**” means the executed written agreement between the Board and the Concessionaire to operate the MFT Concession described in IFB No. SPM25-01010A—Contract No. SPM25-0101A. The Contract, pursuant to Chapter 102, HRS, which includes the Invitation for Bids, consisting of the Bid Proposal, Security Deposit, Notice of Intention to Bid, Qualifications Questionnaire (including any required attachments), Specifications, General Instructions, Special Provisions, Performance Bond, Exhibits, Special Terms and Conditions, and administrative rules of the Board of Land and Natural Resources.
- 1.12. “**CPA**” means a Certified Public Accountant.
- 1.13. “**DLNR**” means the Department of Land and Natural Resources of the State of Hawai‘i.
- 1.14. “**DOH**” means the State of Hawaii Department of Health.

- 1.15. **“DSP”** means the DLNR’s Division of State Parks.
- 1.16. **“DSP Property Manager”** means the employee of DSP acting as agreement administrator for this MFT Concession—Ms. E. Keiki Kipapa, who may be contacted as follows: Address: 1151 Punchbowl Street, Room 310, Honolulu, HI 96813; Tel: (808) 587-0505; Email: earleen.k.kipapa@hawaii.gov—or her designated representative(s).
- 1.17. **“Employees”** when used in the context of Concessionaire includes Concessionaire’s officers, contractors, employees, agents, and its assigns, if any.
- 1.18. **“EPA”** means the federal Environmental Protection Agency.
- 1.19. **“GET”** means State of Hawaii General Excise Tax.
- 1.20. **“Gross Receipts”** means all sales made or proceeds earned or received by the Concessionaire in connection with or resulting from the use of the Premises, as defined herein.
- 1.21. **“HRS”** means Hawaii Revised Statutes.
- 1.22. **“HAR”** means Hawaii Administrative Rules.
- 1.23. **“HST”** means Hawai‘i Standard Time.
- 1.24. **“IFB”** means an invitation for bids.
- 1.25. **“Mobile Food Truck”** or **“MFT”** or **“MFT Concession”** means a motorized, mobile, self-contained vehicle that is equipped to cook, prepare and/or serve food for which a mobile food vendor license has been granted by the State of Hawai‘i. The MFT shall not be longer than twenty-six (26) feet long.
- 1.26. **“Mobile Food Truck Concession Agreement”** or **“MFT Concession Agreement”** means the written contract offered by the DLNR via the “IFB No. SPM25-0101A” documents to responsible, responsive, qualified bidders to operate the subject mobile food truck concession.
- 1.27. **“Mobile Food Truck Concession Area”** or **“MFT Concession Area”** means the physical location of the Mobile Food Truck within the Premises, as defined here in, for Parking Lot “A” as depicted in Exhibit “A.”
- 1.28. **“Notice of Award”** means the award notice to the winning bidder. Notice of Award issued by DLNR and prior to the written Notice to Proceed.
- 1.29. **“Notice to Proceed”** means the document issued by DSP confirming that the Contract agreement has been signed by all parties, and which confirms that the Concessionaire can proceed to begin its business for the Mobile Food Truck Concession at Mākena State Park.
- 1.30. **“Obligee”** means the DLNR and its successors and assigns.
- 1.31. **“Premises”** means Mākena State Park, Kihei, Island of Maui, State of Hawai‘i, which is further identified as Tax Map Key No. (2) 2-1-006:030 (Portion).
- 1.32. **“State”** means the State of Hawai‘i and includes its government offices such as DLNR and DOH.

1.33. “**TMK**” means Tax Map Key number.

Gender Neutral. As used herein, the use of any gender shall include all genders.

Diacritical Marks and Alternate Spellings. Every term used in this IFB shall be construed as containing the appropriate diacritical marks, spelling, and capitalization as the context provides. Any questions as to the meaning of any word or provision shall be resolved by the Chairperson.

Headings. Headings are inserted and provided throughout this Bid Packet only for convenience and reference and in no way define, limit, extend, or describe the scope of intent of this IFB, or any provision hereof.

Subject to Law. All provisions in the Bid Packet shall be construed as if immediately incorporating any and all applicable local, county, state, and federal ordinances, statutes, rules, regulations, or other laws.

2. TERM OF CONTRACT

2.1. The term of the MFT Concession Agreement shall be for a period of thirty-six (36) months commencing on March 1, 2025, through February 29, 2028.

2.2. In addition to any provisions for early termination, BLNR with approval of the Chairperson, may terminate the Contract without cause and in the best interest of the State.

3. SCOPE OF CONCESSION

3.1. The Concessionaire shall be granted the right to rent the MFT Concession Area for the sale of food, non-alcoholic beverages, and other similar products and services considered customary in MFT operations or for those approved in writing by the Board or DSP. The location of the MFT Concession Area at Mākena State Park, Kihei, Island of Maui, Hawai‘i, TMK: (2) 2-1-006:030 (Portion), shall be as shown in **Exhibit “A”** attached hereto.

3.2. The MFT Concession shall be open for business a minimum of five (5) days per week and a minimum of four (4) hours per day between the hours of 10:00 a.m. to 2:00 p.m. The concession may be open for more than five (5) days per week and more than four (4) hours per day and this intent should be expressed in the “Days and Hours of Operation” section of the Bid Proposal. This right shall extend to the MFT Concession Area, subject to the Board’s reservation of the right to require the Concessionaire to limit, suspend temporarily, partially, or completely, the Concessions right granted by the Contract, for public safety or other reasonable considerations. In addition, the exclusive right to sell food, beverages and other products at the MFT Concession Area shall not apply to any future fundraisers by non-profit agencies that the Board may allow. Hours of operation for the Premises are subject to change.

3.3. The Board reserves the right to require the Concessionaire to limit, suspend temporarily, partially, or completely, the Concession rights granted by the Contract whenever the promotion/attraction of a separately permitted event may be jeopardized or adversely affected or when MFT Concession operations may be incompatible with the nature of any other authorized event at the Premises. In such cases, the Concessionaire shall comply accordingly and shall not be entitled to any reduction in rent or other compensation.

- 3.4. In the event any term, covenant, or condition of the Contract is held to be invalid by any court of competent jurisdiction, the invalidity shall not affect any other term, covenant, or condition of the Contract; provided, that the invalidity does not materially prejudice the rights and obligations of either the State or the Concessionaire contained in the valid terms, covenants, or conditions of the Contract.
- 3.5. In case of any dispute as to the interpretation of any term or provision in the Contract, the interpretation by the State shall govern and control. In addition, the parties shall agree that the Board shall have the sole power to decide and resolve any matter which may come up in the future and which is not covered by Contract.

4. COMMENCEMENT OF CONCESSION OPERATIONS

- 4.1. Provided that: (1) the MFT Concession Agreement is fully executed by all parties; (2) DLNR has received the first month's Concession Rent; (3) DLNR has received the required performance bond(s) described herein or equivalent; and (4) DLNR has received the required certificate of insurance, the Concessionaire shall begin full operations on March 1, 2025, or as soon thereafter as the four aforementioned requirements have been satisfied.
- 4.2. The Contract shall take effect on March 1, 2025, regardless of whether full MFT Concession operations have begun by that date.
- 4.3. The Concessionaire shall immediately begin preparations and planning to begin MFT Concession operations and fulfill other Contract requirements after the date of the Notice of Award issued by DLNR and prior to the written Notice to Proceed.

5. CONCESSION RENT AND PAYMENT

- 5.1. Concession Rent. For the entire term of the Contract, the monthly fee shall be the minimum monthly Concession Rent
 - a. The minimum monthly Concession Rent shall be as stated by the Bidder and shall not be less than **\$1,000.00** per month.
 - b. For the entire term of the Contract, the Concessionaire shall compensate the DLNR on the first day of every month.
 - c. In addition to the monthly Concession Rent payment, the Concessionaire shall provide, on or before the fifteenth (15) day of each month, a written statement showing in accurate detail the amount of Gross Receipts for the preceding month for each product sold.
 - d. Both the Concession Rent and the written report with details of Gross Receipts from the preceding month are to be sent to the DSP Property Manager—Attention: Property Management Section, DLNR Division of State Parks, 1151 Punchbowl Street, Room 310, Honolulu, HI 96813.
 - e. On or before July 31 of each contract year, the Concessionaire shall submit to the DSP Property Manager a report of the Gross Receipts for the previous period beginning July 1 through June 30 for each item sold during the reporting period.

- 5.2. Payment. All checks shall be made payable to “DLNR, Division of State Parks” and mailed or delivered to: DLNR, Division of State Parks, c/o DSP Property Manager E. Keiki Kipapa, at 1151 Punchbowl Street, Room 310, Honolulu, Hawai’i 96813, unless otherwise provided in writing by the Chairperson.
- a. Failure to timely pay any part of the Concession Rent shall constitute a material breach of the Contract, and interest at the rate of one percent (1%) simple interest per month and a service charge of \$50.00 a month for each delinquent payment shall be assessed against the Concessionaire on any overdue fee.
 - b. The acceptance of any payment(s) required under the Contract by DNLN shall not be deemed a waiver of any breach by the Concessionaire of any covenant, term, or condition contained in the Contract.
- 5.3. Other costs. The Concessionaire shall not be relieved of its obligation to pay any rental amounts, fees, or other charges accrued during the Contract term and unpaid at the termination of the Contract.

6. EQUIPMENT, MAINTENANCE AND CLEAN-UP

- 6.1. The Concessionaire shall, at its own cost and expense, purchase and install all equipment necessary for the proper and efficient operation of the MFT Concession. The MFT shall be self-contained and shall not be dependent on any outside power source. If electricity is utilized, Concessionaire shall pay its pro-rata share of the electricity consumed, as determined by the Chairperson.
- 6.2. Hookup to the island’s water and sewer system will not be permitted under the Contract. The Concessionaire shall provide any additional equipment and/or MFT vehicles that may be determined by the Chairperson to be necessary for the proper operation of the MFT Concession.
- 6.3. The Concessionaire shall provide sufficient refuse containers or receptacles lined with disposable plastic garbage bags and fitted with swinging, self-closing covers in the immediate vicinity of the MFT to minimize flies and other unsanitary conditions. The Concessionaire shall conduct intermittent trash sweeps as often as necessary throughout each day of operation and shall provide trash containers or receptacles in additional locations throughout the Premises to allow for proper disposal. Piling of boxes, cartons, barrels, or other similar items shall not be permitted on the Premises. The Concessionaire shall transport all refuse collected in its containers or receptacles to an approved County landfill or other offsite location daily. No offsite food preparation refuse shall be brought on to the Premises.
- 6.4. The Concessionaire shall at all times during the term of the Contract keep and maintain the MFT Concession Area and equipment, utensils, supplies, and all other areas used by it in a clean and sanitary condition in conformance with the requirements of the State Department of Health.
- 6.5. The Concessionaire shall ensure that the MFT vehicle on which the food concession is mounted is properly maintained and is not leaking any oil or other fluids onto the ground. The Concessionaire shall be responsible for immediately and completely cleaning up any oil or other fluids spilled from the MFT vehicle.

- 6.6. Failure to maintain, repair and/or clean up the MFT Concession Area as required within five (5) days after receiving a notice to do so shall be deemed to be a breach of Contract, and the State shall have the right to terminate the Contract accordingly.
- 6.7. The MFT shall be removed from the Premises after the close of each day's MFT Concession operation. The Concessionaire will give a seven (7) day notice in writing to the DSP Property Manager if the MFT is expected to remain on the Premises for longer than any 12-hour continuous period.

7. IMPROVEMENTS

- 7.1. The Concessionaire shall not at any time during the term of the Contract construct, place, maintain, or install on the Premises any building, structure, or improvement of any kind, except with the prior written approval of the Chairperson. Unauthorized improvements will be disassembled and removed from the Premises, if the Chairperson so desires, at the sole cost and expense to the Concessionaire. Any authorized improvements at the end of the Contract vest in the State at no cost.
- 7.2. The Concessionaire shall promptly discharge all debts incurred in making any such alteration or repair, and within sixty (60) days after completion, it shall render to the Chairperson documentation demonstrating this for all such debts.

8. LIENS

- 8.1. In the event mechanics and/or materialmen's liens should attach on the Premises, the Concessionaire shall dissolve such liens within fifteen (15) days from the date of such attachment.
- 8.2. In the event that past-due rents, fees or charges are not paid by the Concessionaire within sixty (60) calendar days after written notice of default given by the Chairperson, the State may take possession of and sell any equipment and trade fixtures of the Concessionaire as may be sufficient to pay the rents, fees, and charges owed. A sale under this lien may be made either publicly or privately, provided that the State shall issue written notice to the Concessionaire.

9. SALES AND RENTAL ACCOUNTABILITY

- 9.1. All sales transactions of food and beverages shall be registered in the presence of the MFT Concession customer at time of the sale in a cash register with the following minimum features:
 - a. Detail audit tape
 - b. Transaction receipt for sales for printing and for furnishing receipt to the customer
- 9.2. The Concessionaire must maintain a log of daily sales, which shall be made available for inspection when requested by the Chairperson, the DSP, the DSP Property Manager, or by an authorized representative thereof.

10. BUSINESS RECORDS

- 10.1. The Concessionaire shall be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and preparing and maintaining true, accurate and complete books and records to support and verify all sales and Gross Receipts. These accounting

controls, policies, procedures, and records shall be subject to the Chairperson's review and approval.

- 10.2. The Concessionaire shall at all times during the term of the Contract, keep and maintain all accounts, books, data, and records of concession operations including but not limited to entries reflecting all business transacted under the Contract, tax reports, sales journals, cash slips, sales slips, cash register tapes, perpetual inventory records, concession stand records, warehouse records, requisitions, purchase invoices and all other accounts and records.
- 10.3. The Board, its officers, employees, auditors, agents, and authorized representatives shall at all reasonable times during the term hereof and for a period of one (1) year following the expiration of said term, have the right of access to all of the above accounts, books, data, and records of the Concessionaire for the purpose of determining conformance with the Contract. If such examination reveals any underpayments or overpayments to the State, appropriate reimbursement or credit shall be immediately effected in accordance with the HRS and any other applicable law.
- 10.4. The Concessionaire's internal auditors shall perform auditing procedures in accordance with the Concessionaire's standard audit policies and procedures at least once each Contract year. The Concessionaire shall promptly submit a copy of any and all internal auditor's reports to DSP.
- 10.5. The Concessionaire shall maintain a log of daily sales.
- 10.6. The Chairperson shall have the right to contract and pay for an independent Certified Public Accountant ("CPA") to perform a complete audit of the Concessionaire's entire business affairs, sales and Gross Receipts in accordance with generally accepted auditing standards. The Concessionaire shall assist the CPA by preparing detailed statements, reports, and schedules, searching, and providing supporting documentation, promptly and completely answering inquiries, and in any other matters deemed necessary for the efficient completion of the audit. The Concessionaire shall reimburse the State for the full cost of the audit whenever in the opinion of the CPA, as concurred by the Chairperson:
 - a. It refuses or fails to fully and promptly assist the CPA;
 - b. Its accounts, books, data, and records are incomplete, inaccurate, unsupported, or are otherwise, determined to be not able to be audited;
 - c. Its internal accounting controls have serious weaknesses or deficiencies in the opinion of the CPA, as concurred by the Chairperson; or
 - d. The audit reveals that the Concession Rent required under the Contract has been underpaid by two percent (2%) or more for any period under examination.
- 10.7. In the event that the audit reveals that the Concession Rent has been underpaid by five percent (5%) or more for the period under examination, as provided in the opinion of the CPA, as concurred by the Chairperson, the Concessionaire shall be found to have materially breached the Contract. Following such a breach, the State shall have the right, upon five (5) calendar days' written notice to the Concessionaire, to act on this breach and terminate the Contract, thereby prohibiting further MFT Concession operations of the Concessionaire.

11. QUALITY STANDARDS

- 11.1. The food, beverages, and other products sold in connection with the MFT Concession Agreement shall be of good quality and in accordance with all applicable rules and regulations, including but not limited to those adopted by the DOH. This standard includes but is not limited to products, services, appearance, maintenance, equipment, and business practices. The Concessionaire shall use its best efforts to maintain an efficient and high-quality operation.
- 11.2. All food, beverages, confectionery, refreshments, and the like sold or kept for sale shall be quality, wholesome and pure and shall conform in all respects to the Federal, State and County food quality standards and other laws, rules, ordinances, and regulations. No imitation adulterated or misbranded articles shall be sold or kept for sale, unless clearly identified, and all merchandise kept on hand shall be stored and handled with due regard for sanitation and in compliance with the law. Perishable merchandise leftover at the end of each day shall not be sold at any time.
- 11.3. The Concessionaire shall provide a list of merchandise for sale, which shall be subject to inspection and approval or rejection by the DSP Property Manager. The State reserves the right to prohibit the Concessionaire from selling any merchandise the DSP Property Manager has determined fails to meet the quality standards required by law and as provided herein. Such prohibited merchandise shall be immediately removed from the MFT Concession and shall not be returned for sale, without express written authorization by the DSP Property Manager.
- 11.4. Businesses will provide non-plastic products that are safer for the environment pursuant to Plastic Disposable Foodware Ban **Ordinance No. 5084, Maui County**.
- 11.5. The DSP Property Manager shall promptly notify the Concessionaire in writing upon receipt of any customer complaint regarding the quality or adequacy of the Concessionaire's products or services. The DSP Property Manager may utilize any and all reasonable methods in making its determination, including but not limited to the following: personal observations, taste tests, independent product tests, review of customer questionnaires, customer interviews, customer complaints, "shoppers" surveys, and independent public surveys. The Concessionaire shall be given a reasonable opportunity to correct the problem; however, if the problem continues for more than thirty (30) calendar days, the Chairperson shall have the right to immediately terminate the Contract without further action.

12. OPERATING STANDARDS

- 12.1. The Concessionaire shall at all times adhere to, follow, and enforce its own standards, policies, procedures, programs, and systems.
- 12.2. The Concessionaire shall furnish good, prompt, courteous, and efficient service, and it shall constantly endeavor to improve the MFT Concession operation with a view toward maximizing Gross Receipts potential. The Concessionaire also shall not divert or cause to be diverted any business from the concession in order to avoid Gross Receipts requirements or for any other reason. The Concessionaire shall conduct its MFT Concession operation in such manner as to avoid the MFT: (1) creating, committing, or maintaining of a nuisance on the Premises; or (2) causing or creating unusual or objectionable noises, or noxious smoke, gases, vapors, and odors.

- 12.3. The Concessionaire shall cause the MFT Concession to be open and in full operation, ready to service the public, on all the listed menu items at all times the public would reasonably expect such service to be available. If any menu items runs out, or if modified hours should become necessary, the Concessionaire shall be responsible for promptly providing clear and accurate signage in order to notify potential customers.

13. PROHIBITED USES

- 13.1. The Concessionaire is prohibited from conducting any part of its operation at the Premises in any location other than the MFT Concession Area (see **Exhibit "A"** attached hereto) without prior written permission provided by the DSP Property Manager.
- 13.2. The Concessionaire shall not use the Premises or any part thereof, nor shall the Concessionaire permit the same to be used by anyone else for any purpose related to the MFT Concession, other than for those specific uses listed in Section 3 of the IFB No. SPM25-0101A Specifications.
- 13.3. The Concessionaire shall not permit the MFT Concession Area to be used for any illegal purpose, immoral or indecent activity, or for lodging or sleeping purposes, nor shall it permit disorderly persons to remain upon or loiter within the MFT Concession Area.
- 13.4. The Concessionaire shall observe and comply with all applicable Federal, State, and County laws, regulations and ordinances, including but not limited to all relevant terms and conditions set forth in chapter 13-146 of the Hawaii Administrative Rules ("HAR").

14. ASSUMPTION OF RISK

- 14.1. The Concessionaire assumes the risk of any loss or damage to its equipment and other property on the Premises.
- 14.2. The State shall not be responsible or liable for any loss of, or damage to, the Concessionaire's equipment and property on the Premises, *regardless of how or the manner in which any such loss or damage is sustained.*

15. INSURANCE AND INDEMNITY

- 15.1. The Concessionaire shall procure and maintain, at its sole cost and expense, and acceptable to the State, and keep in full force and effect at all times during the term of this Agreement, the types and amounts of insurance coverages specified herein. The insurance policy or policies shall be issued by an insurance company or companies licensed or authorized to do business in the State of Hawai'i, with an AM Best-rating of not less than "A-VIII" or other comparable and equivalent industry rating, and with coverage terms acceptable to the Chairperson. The policy or policies of insurance shall name the State of Hawaii as an additional insured and a copy shall be filed with the DLNR. It is agreed that any insurance maintained by the State will apply in excess of, and contribute with, insurance provided by Concessionaire's policy or policies. Prior to entry and use by Concessionaire of the Mobile Food Truck Concession Area, or within fifteen (15) days from the effective date of the Contract, Concessionaire shall procure a policy, or policies of insurance of the types and minimum amounts of insurance indicated as follows:
 - a. Comprehensive General Liability Insurance. Comprehensive General Liability Insurance of not less than ONE MILLION DOLLARS (\$1,000,000.00) for each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) aggregate.

- b. Workers' Compensation and Employer's Liability Insurance. Workers' Compensation and Employer's Liability Insurance of not less than ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), or as otherwise required by applicable Federal and State laws.
- c. Fire and Extended Coverage Insurance for Other Hazards and Perils. Fire and Extended Coverage Insurance for Other Hazards and Perils on all of the buildings, structures, equipment, and other improvements within the MFT Concession Area, whether owned by the State or the Concessionaire, or any portion thereof, as would be procured and maintained by a reasonable and prudent owner thereof, the necessary fire policy or policies and extended broad form coverage for other hazards and perils such as, but not limited to, hail, windstorm, hurricane, lightning, explosion, smoke, sprinkler leakage, vandalism, malicious mischief, damage by vessels, aircraft and glass, the minimum combined replacement value of which shall be not less than TWO MILLION DOLLARS (\$2,000,000.00), per occurrence arising from any one cause.
- d. Business Interruption Insurance. Business interruption insurance insuring that the Concession Rent in effect under the Contract during the time of the business interruption will be paid to the State for a period of one (1) year if the Concessionaire is unable to operate the authorized MFT Concession at the Mobile Food Truck Concession Area due to a risk required to be insured against by the Concessionaire. This business interruption insurance shall also cover business interruptions due to failures or interruptions in telecommunications services, strikes, employee lockouts, riots, force majeure, or other civil commotion.
- e. Motor Vehicle Liability Insurance. State of Hawaii No-Fault motor vehicle (or automobile) liability insurance policy or policies of at least (1) ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) per person, per accident, and THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) per occurrence for bodily injury and/or death; (2) an aggregate of \$500,000 per accident or occurrence for bodily injury and death; and (3) FIFTY THOUSAND DOLLARS (\$50,000.00) per accident or occurrence for property damage; and (4) a combined single limit coverage of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) per accident or occurrence for bodily injury, death, and property damage for each of its motor vehicles or automobiles, including each motor vehicle or automobile from the Concessionaire's fleet operating on or within any Mobile Food Truck Concession Area in connection with the Contract. The insurance obtained by the Concessionaire hereunder shall cover the Concessionaire and any affiliates thereof, or, where necessary, the Concessionaire shall require its affiliates to obtain, at their sole cost and expense, such insurance coverage in favor of the State.
- f. Pollution Legal Liability Insurance. Pollution liability insurance to cover claims for property damage, personal injury, and cleanup costs associated with environmental contamination, which shall be written on a "claims made" basis with a limit on liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per claim and a self-insured retention or deductible that shall be no greater than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). Concessionaire shall maintain, in full force and effect throughout the term of the Contract, the following such insurance coverage with minimum limits as follows:

Each Incident Limit	\$2,000,000.00
Aggregate Limit	\$2,000,000.00

15.2. Indemnification. If the State shall, with or without any fault, be made a party to any litigation

commenced by or against the Concessionaire arising out of the Concessionaire's occupancy or use of the Mobile Food Truck Concession Area, or attributable to construction, installation, or any other activity that may occur pursuant to the Contract, the Concessionaire shall release, indemnify, defend, and keep and hold harmless and if appropriate or necessary, in full force and effect throughout the term of this Contract agreement, insure the State, including the State's officers, employees, and agents, from and against any and all claims, demands, actions, suits, causes of action, judgments, injunctions, decisions, orders, liabilities, losses, damages, costs and/or expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, expenses, charges, consultants' fees, and reasonable attorneys' fees, and any other fees incurred by or imposed on the State in connection with such litigation. In any action by the State for recovery of any sum due under the M FT Concession Contract, or to enforce any of the terms, covenants, or conditions contained in this Mobile Food Truck Concession Contract, the State shall be entitled to recover any and all costs, fees expenses, charges, consultants' fees, attorneys' fees, and any other fees incurred by or imposed on the State in connection with such actions.

15.3. The Concessionaire shall not use the Mobile Food Truck Concession Area, the Premises, or any portion thereof, nor shall it permit any of the same to be used by the Concessionaire to do or permit the doing of any act or thing upon the Mobile Food Truck Concession Area, the Premises, or any portion thereof, which will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, liability insurance policies either required herein or carried by the State covering the Mobile Food Truck Concession Area or the buildings or improvements, if any, in which the same are located. The Concessionaire shall, in connection herewith, obey, observe and adhere to any and all present and future laws, rules, regulations, ordinances, orders or decisions issued by the State or any governmental authority pursuant thereto, and the requirements and directions of fire or other underwriters on the applicable policy or policies of the State and the Concessionaire, which may pertain or apply to the operation of the Concession upon the Mobile Food Truck Concession Area.

15.4 Each insurance policy required by the Contract shall contain the following three (3) clauses:

“This insurance shall not be cancelled, limited in scope of coverage or non-renewed until after thirty (30) days' written notice has been given to the State of Hawaii, Department of Land and Natural Resources.”

“It is agreed that any insurance maintained by the State of Hawaii will apply in excess of, and not contribute with, insurance provided by Concessionaire's policy.”

“The State of Hawaii shall be added as an additional insured to Concessionaire's policy or policies of insurance.”

15.5. The Concessionaire shall conduct its activities in connection with the Contract as not to endanger any persons; and the Concessionaire shall indemnify, defend, save and hold harmless the State, DLNR, the Board, DSP, including all of its officers, agents and employees, from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, liabilities costs, and expense, including attorneys' fees, therefor, occasioned wholly or in part by the acts or omissions of the Concessionaire, its Employees, patrols or any persons admitted to the MFT Concession Area.

16. ASSIGNMENTS

- 16.1. The Concessionaire shall not sublet the whole or any part of the Premises, nor shall it assign, hypothecate, or mortgage the Contract or any of its rights thereunder without prior written consent of the Board.
- 16.2. The Board may consent to assignment of the Contract only upon demonstration of need as set out in Section A.6, General Instructions to Bidders. Any consent by the Board shall not operate as a waiver of this condition for future subletting or assignment.

17. SIGNS AND ADVERTISING

- 17.1. The Concessionaire shall furnish, install, and maintain signs listing all prices of items to be sold. Before installation, all signs shall be approved in writing as to the appropriateness, size, design and location by the DSP Property Manager except for those updates needed to comply with paragraph 12.3 (above), and 20.5 and 22.1 (below), which changes shall be authorized upon written notice to the DSP Property Manager who shall have the right to direct the further amendment of these signs, as needed.
- 17.2. No hawking, solicitation, or unauthorized advertising shall be made by the Concessionaire on or outside of the Premises or via any public address system. The Concessionaire shall not engage in or have any form of advertising beyond the signs addressed in paragraphs 17.1 (above), and 17.3 and 20.5 (below) without prior written approval of the DSP Property Manager, except as provided in paragraphs 12.3 (above) and 22.1 (below).
- 17.3. The Concessionaire shall also have the right to provide, post, or keep posted, any notices required by any statute, rules or regulations of the federal, state or county government, or the Board that are deemed to be for the protection of the general public, the Concessionaire or the Premises.

18. MANAGERS AND EMPLOYEES

- 18.1. The Concessionaire recognizes that the competence, integrity, and commitment to quality of its employees is paramount to the success of its food and beverage concession operations.
- 18.2. The Concessionaire shall employ, train, supervise and provide adequate incentives to its employees to ensure prompt, courteous and efficient service at all times.
- 18.3. The Concessionaire shall employ only persons of good moral character, neat appearance, and polite manners. Concessionaire, including its Employees, shall at all times observe a strict impartiality as to rates and services and to be polite and courteous in their dealings with the customers. DSP shall have the right to eject from the Premises any Concessionaire, as defined herein, whose conduct DSP determines to be improper, inappropriate, offensive, or whose conduct is otherwise contrary to the standards required of persons employed by the State of Hawaii. DSP shall have the right to require the Concessionaire to supply an adequate replacement within a reasonable time after ejection. If the Concessionaire is unable or unwilling to furnish a replacement acceptable to DSP, then the Contract shall have been breached, and the Board shall have the right to terminate the Contract.
- 18.4. The Concessionaire shall provide at all times an adequate number of Employees to ensure that the Concession is operated efficiently, and the customers are serviced properly, pursuant to the Contract.

- 18.5. Concessionaire shall require its managers and employees to wear a uniform or badge by which they may be known and distinguished as affiliates of the Concessionaire and the MFT Concession authorized by the Contract. The Concessionaire shall keep and maintain accurate personnel records of all employees to assure proper and valid identification.
- 18.6. The Concessionaire or a responsible representative shall at all times be available at the MFT Concession Area during the hours of operation, as stated in the Contract. The Concessionaire shall be vested with full power and authority to act in matters relating to the day-to-day operation of the concession. The Concessionaire shall be directly responsible for the appearance, conduct and demeanor of all its Employees, as defined herein, and for maintaining the quality and adequacy of all products and services in accordance with the Contract.
- 18.7. Concessionaire shall not unreasonably disturb or offend spectators or interfere with the Premises (Mākena State Park) attendees.

19. STATE EMPLOYEES

- 19.1. No person employed by the State shall be admitted to any share or part of the Contract or to any benefit that may arise from the Contract.
- 19.2. This restriction shall not be construed to extend to this Contract, if made with a corporation or company for its general benefit.

20. OPERATING CONDITIONS

- 20.1. The Concessionaire shall, at its own cost and expense and at all times when the MFT Concession is in operation, maintain and keep the assigned area immediately adjacent thereto, free, and clear from trash and other unsightly, unsafe, or unsanitary objects attributable to the MFT Concession operation. The Concessionaire shall keep and maintain all equipment in good repair.
- 20.2. The Concessionaire shall keep and maintain its MFT facilities in a clean, healthful, and sanitary state compliant with rules and regulations imposed by the Department of Health and any other applicable Federal, State, or County authorities. If an issue arises or the State has identified a need for such services, Concessionaire shall, at its own cost and expense, engage and supervise competent exterminators to control vermin, pests or other environmental factors as often as is necessary. Such extermination services shall be supplied in all areas where food is stored, prepared, or dispensed. No equipment, structures or stands, mobile or otherwise, will remain at the MFT Concession Area overnight or on days when the MFT Concession is not open.
- 20.3. The Concessionaire shall pay and shall not allow to become delinquent any and all costs, fees, taxes, or charges incurred or assessed against the operation of the MFT Concession.
- 20.4. The Concessionaire shall not interfere with free access to and passage within the Premises, nor shall the Concessionaire limit or prohibit in any way ingress or egress to the Premises, except as provided in paragraph 13.3, above.
- 20.5. All signs posed by Concessionaire, shall be pre-approved by DSP, except for those updates needed to comply with paragraph 12.3 (above) and 22.1 (below), and must confirm to applicable State and County ordinances. Signs will be displayed only during the hours that the MFT Concession is open for business.

- 20.6. The Concessionaire shall provide at its own expense, all equipment, dishes, utensils and supplies necessary for the proper operation of the business for which the Concession is granted.
- 20.7. All persons handling food and beverage on behalf of Concessionaire must have a valid current food handler's certificate issued by the Department of Health.

21. COVENANT AGAINST DISCRIMINATION

- 21.1. The Concessionaire shall comply with all applicable Federal and State laws prohibiting discrimination as to race, color, religion, creed, sex, age, or disability in rendering the services required under the Contract and in its employment practices.
- 21.2 Any discriminatory practices by the Concessionaire shall be deemed a breach of the Contract and may be cause for termination of the Contract by the Board.

22. PRODUCTS AND PRICES

- 22.1. The Concessionaire shall at all times during the hours the MFT Concession is in operation, have available for sale within the MFT Concession a sufficient supply of all food, beverages and other products approved for sale under the Contract. If any food, beverages, or products become unavailable, the Concessionaire shall make notations on its signage accordingly.
- 22.2. The Concessionaire shall stock, display, promote (*e.g.*, in accordance with the requirements set forth in paragraphs 12.3, 17.1, 17.2, 17.3, 20.5, and 22.1 (above) and sell the food and beverage products usually sold at the MFT Concession (see listing of allowable items in Section A.1. Notice to Bidders).
- 22.3. Menu signs listing all items for sale and the prices at which they are to be sold must be plainly displayed on the MFT vehicle and Concessionaire's equipment, where applicable.
- 22.4. It is the intent hereof that all prices charged to the public shall be reasonable and competitive and allow the Concessionaire to earn a reasonable rate of return. The reasonableness of prices shall be judged primarily by comparison with current charges for similar goods furnished or sold at other concessions with due allowances for length of season, provision for peak load, accessibility and cost of labor and materials, type of patronage, and other determinants of charges.
- 22.5. Requests to change prices shall be submitted in writing to DSP and shall set forth Concessionaire's justification for the proposed change. All food and beverages shall be dispensed in environmentally conscious products that also comply with Plastic Disposable Foodware Ban **Ordinance No. 5084**, Maui County, and any other applicable statute, rule, regulation, ordinance, or other applicable law.
- 22.6. To the extent feasible, Concessionaire should make an effort to ensure that all packaged food and beverages, in addition to foodware such as utensils, and straws covered by the Maui County Plastic Disposable Foodware Ban **Ordinance No. 5084**, do not contain plastic and/or are biodegradable.
- 22.7. The Concessionaire is prohibited from selling or distributing alcohol under the Contract.

23. LICENSES AND PERMITS

- 23.1. The Concessionaire shall secure and keep current all licenses or permits required by law, pay promptly all charges or fees, and give all notices necessary and incidental to the lawful operation of the Concession.
- 23.2. The Concessionaire shall keep business placards posted on its MFT vehicle, which must be clearly visible to the public at all times when the MFT is on the Premises.

24. INSPECTION AND REMEDIES

- 24.1. The Board, its officers, employees, agents, authorized representatives and contractors shall have the right to enter the MFT Concession Area—including the MFT vehicle itself—at all reasonable times for inspection purposes, including but not limited to observing the Concessionaire’s performance of its obligations under the Contract.
- 24.2. In the event any inspection described in paragraph 24.1 reveals that the area designated for the Concessionaire’s use is not in a safe, sanitary, and otherwise satisfactory operating condition, the inspector shall cause DSP to provide written notice of its finding(s) and a request that Concessionaire remedy the deficient finding to Concessionaire. The Concessionaire, upon receipt of written notice from DSP, as determined by law, shall promptly proceed to remedy the issue and restore the MFT facilities to the satisfaction of DSP. If within ten (10) calendar days following receipt of the notice, or within additional time as DSP may allow in writing, the Concessionaire has not complied with the provisions of such notice, DSP shall at its sole option have the right to remedy the issue in any way deemed appropriate by DSP, and the Concessionaire shall promptly reimburse DSP after written notice for any and all costs or expenses incurred in connection therewith.
- 24.3. The Board, its officers, employees, agents, authorized representatives, contractors and furnishers of utilities and other services, shall have the right to install and/or maintain upon the Premises, including upon the MFT Concession Area, any and all of its existing and future utility, mechanical, electrical and other systems and to enter thereupon at all reasonable times to make such repairs, replacements or alterations thereof as may be necessary or desirable; provided that nothing contained in this Section shall be construed to impose upon the State any obligation or create any liability for its acts or omissions to maintain such systems or to make such repairs, replacements or alterations.
- 24.4. No abatement of monthly Concession Rent payments shall be claimed by or allowed to the Concessionaire by reason of the exercise by the Board of any or all of the rights contained in this Section; provided that nothing contained in this Section shall be construed to permit the Board to exercise any right to access or entry in a manner that will unreasonably interfere with or hinder the use, occupancy, or enjoyment of the MFT Concession Area and Premises by Concessionaire.

25. DESTRUCTION OF OR DAMAGE TO PREMISES

- 25.1. If the Premises are destroyed or damaged, either wholly or in part, by an act of God, war, fire or other catastrophe, that cannot be repaired with reasonable diligence within three (3) months after such occurrence, and if during this three (3) month period the Concessionaire is unable to continue the operation of its MFT Concession in accordance with the Contract, as confirmed in writing by DSP, the Concessionaire may terminate the Contract as of the date of the initial

damage or destruction, and the Concessionaire shall pay any and all fees owed under the Contract only up to the time of such damage or destruction.

26. EXCUSE OF PERFORMANCE

26.1. Except as otherwise provided herein, performance under the Contract by the Concessionaire will be excused only by reason of the following causes:

- a. When performance is prevented, partially or completely, by destruction or damage or inoperability of any kind to the Premises, as stated in paragraph 25.1.
- b. When performance is prevented, partially or completely, by an act of the public enemies of the State of Hawai'i or of the United States of America;
- c. When performance is prevented, partially or completely, by a labor dispute; provided that the DSP shall thereupon have the option to either enter and operate the MFT Concession for its account or to have others operate the MFT Concession for its account until such time as the labor dispute is settled, and the DSP by reason of such operation shall not be obligated to make any monetary restitution or to otherwise compensate the Concessionaire.

27. CANCELLATION OR INTERRUPTION OF OPERATIONS

27.1. The DLNR reserves the right in its sole and arbitrary discretion to interrupt or cancel any or all operations within any state park, including the subject Premises.

27.2. If the DLNR exercises its rights under this Section, the Concessionaire alone shall bear all expenses or losses attributable to such an interruption or cancellation in-full and shall not take or allow to be taken any action for damages against the Board or the DLNR.

28. HOURS OF OPERATION

28.1. Throughout the Contract term, the Concessionaire shall provide annual written reports to the DSP Property Manager or the DSP Property Manager's designated representative(s) setting forth the Concessionaire's anticipated, annual calendar, including expected dates and hours of operation.

28.2. The Concessionaire shall provide at least fourteen (14) days' advance, written notice to the DSP Property Manager or his/her authorized representative(s) if the expected dates and hours of operation should change from those previously reported, unless determined by DSP, in writing, that shorter notice is reasonable. DSP reserves the right to accept or reject any such request for such a change in operations under the Contract.

29. COMPLIANCE WITH CHAPTER 343, HRS

29.1. The Concessionaire will be responsible for compliance with Chapter 343, HRS, with respect to any increased development or change in use of the MFT Concession Area from the existing use pursuant to the MFT Concession Agreement.

SECTION B – BONDS

B.1. PERFORMANCE BOND (PRINCIPAL)

KNOW TO ALL BY THESE PRESENT:

That we, _____,
(Full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called “**Contractor**,” are held, and firmly bound unto the Department of Land and Natural Resources, State of Hawai‘i, its successors and assigns, hereinafter called the “**Obligee**,” in the amount of 2x the monthly Concession Rent payment, that being:

(Write out the dollar amount)

DOLLARS (\$ _____), legal tender of the United States of America, for the payment of which to said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors, and assigns, if any, firmly by these payments. Said amount is evidenced by (fill in one or more paragraph below, as applicable):

Legal tender:

1. Share Certificate unconditionally assigned to or made payable at sight to _____;
2. Certificate of Deposit, No. _____, dated _____, issued by _____,
drawn on _____, a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation (“**FDIC**”) or the National Credit Union Administration (“**NCUA**”), payable at sight or unconditionally assigned to: _____;
3. _____ (Type) Check No. _____, dated _____, issued by _____,
drawn on _____, a bank, savings institution or credit union insured by the FDIC or the NCUA, payable at sight or unconditionally assigned to: _____;
4. Treasurer’s Check No. _____, dated _____, issued by _____,
drawn on _____, a bank, savings institution or credit union insured by the FDIC or the NCUA, payable at sight or unconditionally assigned to: _____;
5. Official Check No. _____, dated _____, issued by _____,
drawn on _____, a bank, savings institution or credit union insured by the FDIC or the NCUA, payable at sight or unconditionally assigned to: _____;
6. Certified Check No. _____, dated _____, accepted by a bank, savings institution or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, payable at sight or unconditionally assigned to: _____

WHEREAS:

The Contractor has by written agreement dated _____ (the MFT Concession Agreement) entered into a legally binding agreement with Obligee for the following Project:

hereinafter called “Principal Bond Contract,” which Contract is incorporated herein by reference and made a part hereof.

NOW, THEREFORE,

The condition of this obligation is such that, if Contractor shall promptly and faithfully perform the Principal Bond Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Principal Bond Contract as it now exists or may be modified according to its terms, without any cost, expense or charge to the Obligee, its officers, agents, successors or assigns, free and harmless from all suits or actions of every nature and kind which may be brought for or on account of any injury or damage, direct or indirect, arising or growing out of the Principal Bond Contract thereof or the manner of doing the same or the neglect of the Contractor or its agents or servants or the improper performance of the Principal Bond Contract by the Concessionaire or from any other cause, then this obligation shall be void; otherwise it shall be and remain in full force and effect.

AND IT IS HEREBY STIPULATED AND AGREED that suit on this bond may be brought before a court of competent jurisdiction without a jury, and that the sum or sums specified in the said Contract as liquidated damages, if any, shall be forfeited to the Obligee, its successors or assigns, in the event of a breach of any, or all, or any part of, the covenants, agreements, conditions, or stipulations contained in the Contract or in this bond in accordance with the terms thereof.

Signed this _____ day of _____, _____.

Name of Concessionaire/ Contractor

* _____
Signature of Authorized Representative

Title

*SIGNATURE
MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGMENT (PRINCIPAL):

STATE OF HAWAII)
) SS.
 COUNTY OF)

On this _____ day of _____, 20____,
before me personally appeared _____, to me
personally known, who, being by me duly sworn or affirmed, did say
that such person executed the foregoing instrument as the free act
and deed of such person, and if applicable in the capacity shown,
having been duly authorized to execute such instrument in such
capacity.

Notary Public, State of Hawaii

My commission expires:_____

B.2. PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____,
(Full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called "Principal," and _____,
(Name and street address of bonding company)

as surety, hereinafter called "Surety," an entity authorized to transact business as a surety in the State of Hawaii, are held and firmly bound unto the Department of Land and Natural Resources, State of Hawaii, its successors and assigns, hereinafter called "Obligee," in the amount in the amount equal to two times (2x) the monthly Concession Rent of _____

(Write out the dollar amount)

DOLLARS (\$ _____), to which payment Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS the above-bound Principal will enter into an agreement with Obligee executed by Principal on _____, for _____

hereinafter called Surety Bond Contract, which Surety Bond Contract is incorporated herein by reference and made a part hereof.

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

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

Surety to this bond hereby stipulates and agrees that no changes, extensions of time, alterations, or additions to the terms of the MFT Concession Agreement, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such changes, extensions of time, alterations, or additions,

and agrees that they shall become part of the Surety Bond Contract without its separate consent.

In the event of default by the Principal, of the obligations under the Surety Bond Contract, then after written Notice of Default from the Oblige to the Principal and subject to the limitation of the penal sum of this bond, Surety shall pay moneys to the Oblige in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

[Seal]

Name of Principal (Concessionaire)

* _____
Signature

Title

* _____
Signature

Title

***ALL SIGNATURES
MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

SECTION C—CONTRACT

**C.1. CONCESSION CONTRACT
MOBILE FOOD TRUCK FOR PARKING LOT “A” AT MĀKENA STATE PARK
SPM24-0101A**

THIS CONTRACT IS MADE AND ENTERED INTO AS OF THE _____ DAY OF _____, 2025, BY AND BETWEEN THE STATE OF HAWAII, HEREINAFTER CALLED THE “STATE,” THROUGH THE CHAIRPERSON OF THE BOARD OF LAND AND NATURAL RESOURCES, AND _____,

HEREINAFTER CALLED THE “CONCESSIONAIRE,” for the operation of a MFT Concession¹ by the Concessionaire at _____ for the period of 36 months commencing on March 1, 2025—although *operation* of the Concession may only begin on March 1, 2025 or as soon thereafter as the following four requirements are met: (1) final execution of this Contract; (2) Department of Land and Natural Resources (“DLNR”) has received the first month’s Concession Rent; (3) DLNR has received the performance bond or equivalent; and (4) DLNR has received the required certificate of insurance—and ending on February 29, 2028.

WHEREAS, the written Bid Proposal for IFB No. SPM25-0101A, Lot “A” submitted by the Concessionaire on _____ (the “Bid Proposal”), has been accepted by the State as the highest responsible Bid Proposal submitted pursuant to a call for bids made on December 16, 17, 18, 2024, in accordance with Chapter 102, Hawaii Revised Statutes (“HRS”) has been accepted by the State as the highest responsible Bid Proposal for said Concession;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, the parties agree as follows:

A. Scope of Work. The Concessionaire agrees to perform the work in strict accordance with the terms and conditions of this Agreement, which includes all terms and conditions set forth in the Notice to Bidders, Notice of Intention to Bid submitted by Concessionaire, Qualifications Questionnaire submitted by Concessionaire, Bid Proposal submitted by Concessionaire, General Instructions to Bidders, Specifications, Appendix; and any addenda to Specifications issued by the DLNR, and the Special Terms and Conditions (Exhibit “C”), which are attached to this Contract and incorporated by reference herein.

B. Compensation. As compensation (minimum monthly bid **\$1,000.00** per month per

¹ All terms used herein shall have the same meaning as are defined in Section A.7(1) of the Bid Packet for IFB No. SPM 25-0101A, as is appropriate given the context.

IFB NO. SPM25-0101A
Lot A, Mobile Food Truck

DLNR Division of State Parks
Mākena Park – Maui District

location) to the State of Hawai'i for the right of the Concessionaire to operate a MFT Concession in accordance with the Scope of Work described in paragraph A, above, at Parking Lot Location "A" at Mākena State Park, Kihei, Island of Maui, Hawai'i, Tax Map Key Nos. (2) 2-1-006:030 (Portion) ("Premises"), agrees to pay the DLNR the following amount(s) each and every month in advance of the 1st day of the month for which the payment applies:

SPM25-0101A _____ Dollars (\$ _____)
(Write out the dollar amount)

from March 1, 2025, to February 29, 2028 (36 months), in strict accordance with the Bid Proposal submitted by Concessionaire, Specifications, Appendix, and any official addenda to the Specifications, which are attached to this Contract.

IN WITNESS WHEREOF, the parties have executed this Contract, effective the day and year first above written.

STATE OF HAWAI'I

Approved by the Board of
Land and Natural Resources
at its meeting held on:
August 12, 2022, Item E-2.

By: _____
Dawn N. S. Chang, Chairperson
Board of Land and Natural Resources

CONCESSIONAIRE

_____ [Name]

*By: _____

Print Name: _____

Its: _____

*By: _____

Print Name: _____

Its: _____

APPROVED AS TO FORM:

Deputy Attorney General

Dated: _____

***ALL CONCESSIONAIRE SIGNATURES
MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC**

SECTION D – EXHIBITS

D.1. EXHIBIT “A” (Concession Area Map)

CONCESSION AREA MAP

On the Island of Maui Parking Lot A at Mākena State Park:

1. MFT CONCESSION AREA described in IFB No. SPM25-0101A – EXHIBIT A

Exact location for MFT (the MFT Concession Area) will be determined by the DSP District Superintendent for that island and is subject to change.



D.2. EXHIBIT “B” (Hawaii Revised Statutes chapter 102 (Concessions on Public Property))

**CHAPTER 102
CONCESSIONS ON PUBLIC PROPERTY**

Section

- [102-1](#) Definition
- [102-2](#) Contracts for concessions; bid required, exception
- [102-3](#) Qualification of bidders
- [102-4](#) Advertisement for bids
- [102-5](#) Bids; opening; rejection
- [102-6](#) Deposits of legal tender, etc., to accompany bid
- [102-7](#) Forfeiture of deposits, return thereof
- [102-8](#) Bond may be substituted for deposits
- [102-9](#) Contracts to be in writing; highest responsible bidder
- [102-10](#) Modification of contract terms
- [102-11](#) Security for performance; conditions
- [102-12](#) Surety on bond; justification
- [102-13](#) Amendment of contracts, when authorized
- [102-14](#) Use of public buildings by blind or visually
handicapped persons
- [102-15](#) Violation voids contract
- [102-16](#) Penalty

Cross References

Hawaii public procurement code, see chapter 103D.

§102-1 Definition. The word "concession" as used in this chapter means the grant to a person of the privilege to:

(1) Conduct operations involving the sale of goods, wares, merchandise, or services to the general public including but not limited to food and beverage establishments, retail stores, motor vehicle rental operations under chapter 437D, advertising, and communications and telecommunication services, in or on buildings or land under the jurisdiction of any government agency;

(2) Operate a parking lot on property owned or controlled by the State with the exception of buildings, facilities, and grounds operated by or otherwise under the jurisdiction of the department of education; and

(3) Use, for compensation, space on public property to display advertising, or to conduct operations for communications or telecommunications purposes. [L 1963, c 93,

§1; Supp, §7B-1.5; am L 1967, c 189, §3; HRS §102-1; am L 1997, c 208, §2; am L 2001, c 303, §1]

§102-2 Contracts for concessions; bid required, exception. (a) Except as otherwise specifically provided by law, no concession or concession space shall be leased, let, licensed, rented out, or otherwise disposed of either by contract, lease, license, permit, or any other arrangement, except under contract let after public notice for sealed bids in the manner provided by law; provided that the duration of the grant of the concession or concession space shall be related to the investment required but in no event to exceed twenty-five years for the initial term, and if amended, any then remaining term plus any agreed extension thereof awarded or granted by the government agency making a lease or contract or other arrangement relating to a concession; provided further that and subject to approval by county council resolution, the twenty-five-year limit shall not apply to nonprofit corporations organized pursuant to chapter 414D.

(b) The bidding requirements of subsection (a) shall not apply to concessions or space on public property set aside for the following purposes:

- (1) For operation of ground transportation services and parking lot operations at airports, state parks, and small boat harbors, except for motor vehicle rental operations under chapter 437D;
- (2) For lei vendors;
- (3) For airline and aircraft operations;
- (4) For automated teller machines and vending machines, except vending machines located at public schools operated by blind or visually handicapped persons in accordance with section 302A-412;
- (5) For operation of concessions set aside without any charge;
- (6) For operation of concessions by handicapped or blind persons, except concessions operated in the public schools by blind or visually handicapped persons in accordance with section 302A-412;
- (7) For operation of concessions on permits revocable on notice of thirty days or less; provided that no such permits shall be issued for more than a one-year period;
- (8) For operation of concessions or concession spaces for a beach service association dedicated to the preservation of the Hawaii beach boy tradition, incorporated as a nonprofit corporation in accordance with state law, and whose members are appropriately licensed or certified as required by law;
- (9) For operation of concessions or concession spaces providing for beach or ocean-related recreational services; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;
- (10) For operation of concessions at county zoos, botanic gardens, or county parks that are designated by the respective county director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique and are supported by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting county aims and goals of the zoo, botanic garden, or designated county park, and operating under

agreement with the appropriate agency solely for those purposes, aims, and goals;

- (11) For operation of concessions at state parks that are designated by the board of land and natural resources as environmentally, culturally, historically, or operationally unique and are supported by nonprofit corporations incorporated in accordance with state law solely for purposes of supporting state aims and goals of the designated state park, and operating under agreement with the appropriate agency solely for those purposes, aims, and goals;
- (12) For operation of concessions at county zoos, botanic gardens, or county parks that are designated by the respective county director of parks and recreation, in the director's sole discretion, as environmentally, culturally, historically, or operationally unique; provided that the concessions are awarded to the responsible offeror whose proposal is determined to be the most advantageous, taking into consideration prices and evaluation factors set forth in the request for proposals;
- (13) For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing; provided that the written determination shall be included in the contract file;
- (14) For any of the operations of the Hawaii health systems corporation and its regional system boards;
- (15) For airport operation of concessions; and
- (16) For the operations of the natural energy laboratory of Hawaii authority.

(c) The bidding requirements of subsection (a) shall not apply to any nonrenewable dispositions granting rights for a period not in excess of fourteen days.

(d) The bidding requirements and fifteen-year limit in subsection (a) shall not apply to any disposition or grant of rights to anyone to place one or more names, in accordance with applicable county sign ordinances, on a state or county building. [L 1959, c 245, §1; am L 1960, c 14, §2; am L 1962, c 5, §2; am L 1963, c 93, §§2, 3; Supp, §7B-1; am L 1967, c 189, §§1, 2; HRS §102-2; am L 1986, c 185, §2; am L 1987, c 101, §1; am L 1991, c 232, §1; am L 1996, c 44, §1 and c 89, §9; am L 2001, c 303, §2; am L 2002, c 253, §6; am L 2004, c 201, §§2, 6; am L 2007, c 15, §1 and c 290, §14; am L Sp 2009, c 5, §2; am L 2014, c 9, §1 and c 141, §§2, 4; am L 2015, c 176, §1; am L 2016, c 121, §1; am L 2017, c 138, §2; am L 2022, c 163, §2; am L 2023, c 72, §2]

§102-3 Qualification of bidders. Before any prospective bidder is entitled to submit any bid for the occupancy of any such space, the prospective bidder shall, not less than six calendar days prior to the day designated for opening bids, give written notice to the officer charged with letting the contract of the prospective bidder's intention to bid, and the officer shall satisfy oneself of the prospective bidder's financial ability, experience and competence to carry out the terms and conditions of any contract that may be awarded. For this purpose, the officer may, in the officer's discretion, require prospective bidders to submit answers, under oath, to questions contained in a form of questionnaire setting forth a complete statement of the experience, competence and financial standing of the prospective bidders. Whenever it appears to the officer, from answers to the questionnaire or otherwise, that any prospective bidder is not fully qualified and able to

carry out the terms and conditions of the contract that may be awarded, the officer shall, after affording the prospective bidder an opportunity to be heard and if still of the opinion that the bidder is not fully qualified to carry out the terms and conditions of the contract that may be awarded, refuse to receive or consider any bid offered by the prospective bidder. The officer charged with letting the contract shall not divulge or permit to be divulged the names and the number of persons who have submitted their notice of intention to bid until after the opening of bids. All information contained in the answers to questionnaires shall remain confidential, and any government officer or employee who knowingly divulges or permits to be divulged any such information to any person not fully entitled thereto shall be fined not more than \$250. Questionnaires so submitted shall be returned to the bidders after having served their purpose. [L 1959, c 245, §2; am L 1962, c 5, §3; Supp, §7B-2; HRS §102-3; gen ch 1985]

§102-4 Advertisement for bids. Public notice of a call for bids shall be made not less than three different days statewide, with respect to any state agency, or county-wide within the particular county with respect to any county or county agency. [L 1959, c 245, §3; Supp, §7B-3; HRS §102-4; am L 2001, c 303, §3]

§102-5 Bids; opening; rejection. The time of opening of such tenders shall be not less than five days after the last publication. All bids shall be sealed and delivered to the officer advertising therefor and shall be opened by the officer at the hour and place to be stated in the call for tenders in the presence of all bidders who attend, and may be inspected by any bidder. All bids which do not comply with the requirements of the call for tenders shall be rejected. The officer calling for bids may reject any or all bids and waive any defects when in the officer's opinion such rejection or waiver will be for the best interest of the public. [L 1959, c 245, §4; Supp, §7B-4; HRS §102-5; gen ch 1985]

§102-6 Deposits of legal tender, etc., to accompany bid. (a) All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration, in a sum not less than five per cent of the amount bid, payable at sight or unconditionally assigned to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the deposit shall be in a sum not less than \$2,500 plus two per cent of the amount in excess of \$50,000.

If the bid deposit is in the form of a surety bond, it shall be issued in accordance with subsection (b).

(b) A bid may be accompanied by a surety bond executed to the officer calling for bids by the bidder as principal and by any bonding company listed in the United States Treasury List; provided that the bond furnished by any surety listed shall not exceed the bonding capacity rating of that surety on the Treasury List; in a sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract. [L 1959, c 245, §5; am L 1962, c 5, §4; Supp, §7B-5; am L 1967, c 142, §1; HRS §102-6; am L 1975, c 167, §2; am L 1976, c

88, §2; am L 1983, c 108, §1; am L 1990, c 345, §2; am L 1992, c 274, §2; am L Sp 1993, c 8, §3; am L 1994, c 186, §3]

§102-7 Forfeiture of deposits, return thereof. If the bidder to whom the contract is awarded fails or neglects to enter into the contract and furnish satisfactory security, as required by sections 102-11 and 102-12, within ten days after the award or within such further time as the officer awarding the contract may allow, the officer shall pay the amount of the deposit into the treasury as a realization of the State, county or other governmental agency, as the case may be. If the contract is entered into and the security furnished within the required time, the deposit, certificate, or check shall be returned to the successful bidder. The deposits made by the unsuccessful bidders shall be returned to them after the contract is entered into or, if the contract is not awarded or entered into, after the officer's determination to publish another call for tenders. [L 1959, c 245, §6; Supp, §7B-6; HRS §102-7]

§102-8 Bond may be substituted for deposits. In lieu of the deposits prescribed by section 102-6, a bid may be accompanied by a surety bond executed to the officer calling for bids 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 to act as surety and doing business in the State 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 surety, in a penal sum of equal amount, conditioned upon the bidder entering into the contract and furnishing satisfactory security within ten days after the award or within any further time as the officer may allow, if the bidder is awarded the contract. [L 1959, c 245, §7; Supp, §7B-7; HRS §102-8; am L 1990, c 345, §3; am L 1992, c 274, §3]

§102-9 Contracts to be in writing; highest responsible bidder. All such contracts shall be in writing, shall be executed by the officer letting the contract in the name of the State, county, or the board, bureau, or commission thereof authorized to let contracts in its own name, as the case may be, and shall be made with the highest responsible bidder, if such bidder qualifies by providing the security required by sections 102-11 and 102-12. If the highest and best bid or any other bid is rejected, or if the bidder to whom the contract was awarded fails to enter into the contract and furnish satisfactory security, the officer may, in the officer's discretion, award the contract to the next highest and best remaining responsible bidder. [L 1959, c 245, §8; Supp, pt of §7B-8; HRS §102-9; gen ch 1985]

§102-10 Modification of contract terms. If during the term of the contract (including contracts which have been executed and are presently in force) there has been a reduction of fifteen per cent or more in the volume of business of the concessionaire for a period of sixty days or more, computed on the average monthly gross income for the eighteen months just prior to the period or as long as the concessionaire has been in the business, whichever period is shorter, and such reduction as determined by the officer letting the contract is caused by construction work conducted during the period of time on, or within or contiguous to, the public property upon which the concession is located by either the state or county governments, or both, the officer, with the approval of the

governor in the case of a state officer and the chief executive of the respective county in the case of a county officer, may modify any of the terms of the contract, including the agreed upon rent, for a period which will allow the concessionaire to recoup the amount lost by such reduction; provided that if the contract includes provisions allowing modification for the above contingencies, this section shall not be applicable thereto; provided further that this provision shall not apply to any particular concession if the application thereto may impair any contractual obligations with bondholders of the State or counties or with any other parties. [L 1963, c 93, §5; Supp, pt of §7B-8; HRS §102-10]

§102-11 Security for performance; conditions. (a) Before any contract is entered into, the party with whom the contract is proposed to be made shall give security for the performance thereof as follows:

- (1) For a concession required to provide security under the contract in an amount less than four months' rental and other charges, if any:
 - (A) A good and sufficient bond;
 - (B) A deposit of legal tender; or
 - (C) A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and
 - (2) For a concession required to provide security under the contract in an amount equal to or greater than four months' rental and other charges, if any: a good and sufficient bond.
- (b) All security provided under this section shall:
- (1) Be conditioned on the full and faithful performance of the contract in accordance with the terms and intent thereof;
 - (2) Be in an amount not less than two months' rental and other charges, if any, required under the contract; provided that any contract for the sale and delivery of in-bond merchandise at the Daniel K. Inouye International Airport shall require a bond in an amount not less than four months of the highest minimum annual rental guaranty required under the contract; and
 - (3) By its terms inure to the benefit of the State or of the county, as the case may be. [L 1959, c 245, §9; Supp, §7B-9; HRS §102-11; am L 1982, c 141, §1; am L 2006, c 37, §2; am L 2018, c 18, §2]

§102-12 Surety on bond; justification. A surety company authorized to do business under the laws of the State may be accepted as surety on the bond, whenever, in the opinion of the officer letting the contract, the rights of all parties in interest will be fully protected. If the surety or sureties on the bond, whether individual or corporate, shall be other than a surety company authorized to do business under the laws of the State, there shall be not more than four sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond; provided that in the case of the other sureties the officer letting the contract shall require that the surety shall also severally deposit with the officer certified checks, certificates of deposit, or share certificates (unconditionally assigned or on demand on or after such period as the

officer may stipulate) or bonds, stocks, or other negotiable securities, or execute and deliver to the officer a deed of trust of real property, all of such character as shall be satisfactory to the officer, each surety to furnish the security to the full cash value of one hundred per cent of the amount for which the surety shall so have justified; provided further that the contracting officer, in the officer's discretion, may waive the necessity of furnishing the security, to any extent that the officer may deem warranted, in cases where, upon an actual examination, the officer is satisfied as to the financial responsibility of the proposed surety or sureties; provided that if there is but one personal surety the surety shall so justify for the full amount of the bond. [L 1959, c 245, §10; Supp, §7B-10; HRS §102-12; gen ch 1985; am L 1990, c 345, §4]

§102-13 Amendment of contracts, when authorized. Where there is an outstanding contract, lease, license, permit, or any other such arrangement for the operation of concessions or concession spaces on governmental property, the parties may amend the instrument to permit a related use with an increased rental adjustment where the lessee, licensee or permittee, as the case may be, can show financial hardship arising out of changes of circumstances or otherwise, if required to continue operation under the original permitted use. [L 1962, c 5, §5; Supp, §7B-11.5; HRS §102-13]

§102-14 Use of public buildings by blind or visually handicapped persons.

(a) For the purpose of providing blind or visually handicapped persons, as defined in sections 235-1, 347-1, and 347-2 with remunerative employment, enlarging their economic opportunities and stimulating them to greater efforts in striving to make themselves self-supporting, blind or visually handicapped persons registered by the department of human services under section 347-6 and issued permits under subsection (c) shall be authorized to operate vending facilities and machines in any state or county public building for the vending of newspapers, periodicals, confections, tobacco products, foods, beverages, and such other articles or services prepared on or off the premises in accordance with all applicable laws.

(b) The department of human services, after consultation with authorities responsible for management of state or county public buildings, shall adopt rules in accordance with chapter 91, necessary for the implementation of this section, including, but not limited to rules to assure that priority be given to registered blind or visually handicapped persons in the operation of vending facilities in state or county public buildings and to establish, whenever feasible, one or more vending facilities in all state and county public buildings.

(c) Assignment of vending facilities and space for vending machines shall be by permit issued by the department of human services.

(d) No person shall advertise or otherwise solicit the sale of food or beverages for human consumption in any public building which is in competition with a vending facility or machine operated or maintained by a duly authorized blind or visually handicapped person as prescribed by rules and regulations established under chapter 91. Any person who violates this subsection shall be subject to a fine of not more than \$1,000.

(e) After July 1, 1981, or upon the expiration of vending machine contracts in existence on June 10, 1981, no vending machines shall be placed in any state or county public building in which there is a vending facility or machine assigned by permit to a

blind or visually handicapped person except pursuant to a permit issued by the department of human services.

(f) Any permit granted pursuant hereto may be terminated by the department of human services if the department determines that the vending facility or machine is not being operated in accordance with prescribed rules.

(g) This section shall not apply to the judiciary history center facilities in the Aliʻiolani Hale building, University of Hawaiʻi system, public library system facilities, department of education facilities, department of transportation airport and harbor restaurant and lounge facilities and operations, public parks, and state and county facilities designed and intended for use as facilities for entertainment and other public events.

(h) After July 1, 1981, any department, agency, or instrumentality of the State or any of its political subdivisions planning the construction, substantial alteration, or renovations of any building shall consider including plans for a vending facility maintained or operated by a blind or visually handicapped person. The present vendor who is operating a vending facility shall not be displaced or dislocated from any state or county building because of renovations or substantial alterations, except for any temporary displacement or dislocation which may be necessary for the completion of the renovations or alterations. Any such vendor shall have the first option to operate the facility upon completion of the renovations or substantial alterations. [L 1937, c 208, §1; RL 1945, §465; RL 1955, §7-20; am L 1959, c 246, §14; am L 1964, c 30, §2; HRS §102-14; am L 1981, c 131, §1; am L 1987, c 339, §4; am L 1993, c 328, §2; am L 1994, c 57, §3; am L 1996, c 138, §2]

§102-15 Violation voids contract. After May 31, 1959, any contract awarded or executed in violation of sections 102-1 to 102-12 shall be void. [L 1959, c 245, §11; Supp, §7B-11; HRS §102-15]

§102-16 Penalty. Any officer of the State or of any municipal, county, or other political subdivision thereof, or any person acting under or for such officer or any other person who violates any provisions of sections 102-1 to 102-12 shall be fined not more than \$1,000 or imprisoned not more than one year, or both. [L 1959, c 245, §12; Supp, §7B-12; HRS §102-16]

D.3. **EXHIBIT “C”** (Special Terms and Conditions)

SPECIAL TERMS AND CONDITIONS

ARTICLE I. COMPLIANCE WITH AMERICANS WITH DISABILITIES ACT

A. **Compliance with Americans with Disabilities Act.**

1. **Concessionaire's Warranty.** The Concessionaire agrees that it shall conduct its Concession operation and use the Mobile Food Truck Concession Area in accordance with the Americans with Disabilities Act, 42 U.S.C. Section 12101 et seq. (hereafter collectively the “ADA”).
2. **Accessible Services.** The Concessionaire acknowledges that, pursuant to the ADA, programs, services, and other activities provided by a public entity, whether directly or through a contractor, must be accessible to disabled persons. The Concessionaire shall provide the services specified in this Contract in a manner that complies with the ADA and any and all other applicable federal, state, or county disability rights legislation. The Concessionaire agrees not to discriminate against disabled persons in the provision of services, benefits, or activities provided under this Contract and further agrees that any violation of the ADA on the part of the Concessionaire and Concessionaire’s agents shall constitute a material breach of this Contract.

ARTICLE II. COMPLIANCE WITH ENVIRONMENTAL LAWS

B. **Compliance with Environmental Laws.**

1. **Compliance with Environmental Laws.** The Concessionaire agrees, at its sole expense and cost, to comply with all Environmental Laws, as herein defined, that apply to the Mobile Food Truck Concession Area during the term of this Contract, and the Concessionaire's use and occupancy of, and activities on, the Mobile Food Truck Concession Area. This duty shall survive the expiration or termination of this Contract which means that the Concessionaire's duty to comply with Environmental Laws shall include complying with all Environmental Laws, regulations, and orders that may apply, or be determined to apply, to the use, occupancy, and activities of the Concessionaire on the Mobile Food Truck Concession Area after the expiration or termination of this Contract. Failure of the Concessionaire to comply with any Environmental Laws shall constitute a breach of this Contract for which the State shall be entitled, in its discretion, to terminate this Contract and take any other action at law or in equity it deems appropriate.
2. **Hazardous Substances.** The Concessionaire shall not use, store, treat, dispose, discharge, release, generate, create, or otherwise handle any Hazardous Substances, or allow the same by any third person, on the Mobile Food Truck Concession Area without first obtaining the written consent of the DLNR and complying with all Environmental Laws, including giving all required notices, reporting to, and obtaining permits from, all appropriate authorities, and complying with all provisions of this Contract.
3. **Notice to State of Hawai‘i.** The Concessionaire shall always keep State fully informed regarding all matters relating or related to or covered by the Environmental Laws affecting the Concessionaire or the Mobile Food Truck Concession Area. This duty shall also include providing immediate written notice of any investigation, enforcement action, remediation,

or other regulatory action, order of any type, or any legal action, initiated, issued, or any indication of an intent to do so, communicated in any way to the Concessionaire by any federal or State authority or individual which relates in any way to any Environmental Laws, or any Hazardous Substances, and the Concessionaire or the Mobile Food Truck Concession Area. This written notice to the State shall include the Concessionaire immediately providing the State with copies of all written communications from individuals or State and federal authorities, including copies of all correspondence, claims, complaints, warnings, reports, technical data, and any other documents received or obtained by the Concessionaire. At least thirty (30) days prior to termination of this Contract by the Concessionaire, the Concessionaire shall provide to the State written evidence satisfactory to the State that the Concessionaire has fully complied with all Environmental Laws, including any orders issued by any governmental authority to the Concessionaire that relate to the Mobile Food Truck Concession Area.

4. Notice to Authorities. The Concessionaire shall provide written notice to the federal Environmental Protection Agency (“EPA”) and the State of Hawaii, Department of Health (“DOH”), at least sixty (60) days prior to the termination of this Contract that the Concessionaire intends to vacate the Mobile Food Truck Concession Area and terminate its operations on the Mobile Food Truck Concession Area. The Concessionaire shall allow the agents or representatives of said authorities access to the Mobile Food Truck Concession Area at any and all reasonable times for the purpose of inspecting or testing for compliance with any Environmental Laws. The Concessionaire shall provide copies of said written notices to State at the time said notices are provided by said authorities.
5. Disposal/Removal. Except for materials that are lawfully sold in the ordinary course of the Concessionaire's business, the Concessionaire shall cause any Hazardous Substances to be removed from the Mobile Food Truck Concession Area for disposal and to be transported from the Mobile Food Truck Concession Area solely by duly licensed Hazardous Substances transporters to duly licensed facilities for final disposal as required by all applicable Environmental Laws. The Concessionaire shall provide the State with copies of documentary proof, including manifests, receipts, or bills of lading, which reflect that said Hazardous Substances have been properly removed and disposed of in accordance with all Environmental Laws.
6. Environmental Investigations and Assessments. The Concessionaire, at its sole cost and expense, shall cause to be conducted such investigations and assessments of the Mobile Food Truck Concession Area to determine the presence of any Hazardous Substance on, in, or under the Mobile Food Truck Concession Area as may be directed from time to time by the State, in the State's sole discretion, or by any federal or state authority. The extent and number of any environmental investigations and assessments shall be determined by the State or the federal or State authority directing said investigations and assessments to be conducted. The Concessionaire shall retain a competent and qualified person or entity that is satisfactory to the State or governmental authority, as the case may be, to conduct said investigations and assessments. The Concessionaire shall direct said person or entity to provide the State or governmental authority, if so requested, with testable portions of all samples of any soils, water, ground water or other material that may be obtained for testing and provide to the State and the governmental authority written results of all tests on said samples upon completion of said testing.
7. Remediation. In the event that any Hazardous Substances are used, stored, treated, disposed of on the Mobile Food Truck Concession Area, handled, discharged, released, or determined

to be present on the Mobile Food Truck Concession Area, the Concessionaire shall, at its sole expense and cost, remediate the Mobile Food Truck Concession Area of any Hazardous Substances, and dispose/remove said Hazardous Substances in accordance with this Mobile Food Truck Concession Agreement and the Environmental Laws. This duty to remediate by the Concessionaire includes strict compliance with all Environmental Laws and directives. This duty to remediate shall also include replacement of any materials, such as soils, so removed with material that is satisfactory to the State and governmental authority, as the case may be. Concessionaire is solely responsible to repair any damage to the Premises caused by Concessionaire or its employees, agents, and invitees.

8. “Environmental Laws” shall mean all federal, state and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations, of the foregoing by any court, legislative body, agency or official, judicial decisions, orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These Environmental Laws include, but are not limited to, regulations and orders of the EPA and the DOH.
 9. State’s Right to Act. In the event the Concessionaire fails for any reason to comply with any of the duties under this Contract or under any Environmental Laws within the time set for doing so, the State shall have the right, but not obligation, in its sole discretion, to perform those duties, or cause them to be performed. The Concessionaire hereby grants access to the Premises at all reasonable hours to the State, its agents and anyone designated by the State in order to perform said acts and duties. Any cost, expense, or liability of any type that may be incurred by the State in performing said acts or duties shall be the sole responsibility of the Concessionaire and the Concessionaire hereby agrees to pay for those costs and expenses and to indemnify, release, defend and hold harmless the State for any liability incurred. This obligation shall extend to any costs and expenses incident to enforcement of the State’s right to act, including, without limitation, litigation costs, attorneys’ fees, and the costs and fees for collection of said cost, expense, and liability.
- C. Release and Indemnity. The Concessionaire hereby agrees to release the State, and the State’s officers, agents, employees, successors, and assigns, from any liability of any kind, including, but not limited to, any liability for any damages, penalties, fines, judgments, or assessments that may be imposed or obtained by any person, agency, or governmental authority against the Concessionaire by reason of any Hazardous Substances that may be present by whatever means on, in, or under the Mobile Food Truck Concession Area. The Concessionaire hereby agrees to release, indemnify, defend with counsel suitable to the State, and hold harmless the State from any liability that may arise in connection with, or by reason of, any occurrence involving any Hazardous Substances that may be alleged to be connected or related in any way with the Mobile Food Truck Concession Area, the State’s ownership of the Premises, or this Contract, including, without limitation, the presence of any Hazardous Substance on, in, or under the Premises.

ARTICLE III. CHANGES IN CONCESSIONAIRE

- A. Changes in Concessionaire.
 1. Controlling Interest. The merger of the Concessionaire with any other entity or the transfer of a fully controlling ownership interest in the Concessionaire, or the assignment or transfer

of a substantial portion of the assets of the Concessionaire, whether or not located on the premises, shall constitute an assignment. Without limiting the generality of the foregoing, if the Concessionaire is a partnership, a withdrawal or change, voluntary, involuntary, or by operation of law, of the partner or partners owning fifty-one percent (51%) or more of the partnership, or the dissolution of the partnership, or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the Concessionaire, shall be deemed an assignment. If the Concessionaire is a corporation or limited liability company, any dissolution, merger, consolidation, or other reorganization of the Concessionaire or the sale or other transfer of a controlling percentage of the capital stock or membership interests of the Concessionaire or the sale or transfer of at least fifty-one percent (51%) of the value of the assets of the Concessionaire, shall be deemed an assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock or interests possessing at least twenty percent (20%) (or a percentage less than twenty percent (20%) if such percentage represents a controlling interest in the Concessionaire) of the total combined voting power of all classes of the Concessionaire's capital stock or interests issued, outstanding and entitled to vote for the election of directors.

2. Sale of Assets. The sale of all or substantially all of the assets of the Concessionaire, or the transfer of Concessionaire's Concession business, shall be deemed to constitute an "assignment" for purposes of this Contract which requires the prior written approval of the State in accordance with the Mobile Food Truck Concession Agreement.
 3. State Shall Approve Each Assignment. The consent of the State to any one assignment shall not constitute a waiver of the State's right to approve subsequent assignments, nor shall consent of the State to any one assignment relieve or release any party previously liable as the Concessionaire from any obligation under this Contract. The acceptance by the State of the payment of concession rents following an assignment shall not constitute consent to that assignment or any other assignment, and the State's consent shall be evidenced only in writing.
- B. No Release. In no event shall the State's consent to an assignment or transfer be deemed to be a release of the Concessionaire as the primary obligor hereunder. Nor shall the acceptance of concession rents by the State constitute a release or waiver of the State's rights against the Concessionaire, or as a consent to any assignment or transfer, nor shall any other act of the State in accordance with this Article III. (Changes in Concessionaire).
- C. Other Liens Prohibited. The Concessionaire shall not commit or suffer any act or neglect whereby the Premises or any portion thereof, including any portion of the Mobile Food Truck Concession Area thereupon or therein, or the estate or interest of the Concessionaire in the same, at any time during the term of this Contract shall become subject to any attachment, lien, charge, or encumbrance whatsoever. The Concessionaire shall release, indemnify, defend, save and hold the State harmless, and if or when appropriate or necessary, insure the State and the State's officers, employees' and agents from and against any and all attachments, liens, charges, and encumbrances, and any and all actions, suits, judgments, and orders relating thereto and any and all costs, fees, charges, expenses, and attorneys' fees resulting therefrom, it being expressly understood that the Concessionaire shall have no authority, express or implied, to create any attachment, lien, charge, or encumbrance upon or affecting the Premises, or any portion thereof, except as otherwise authorized in writing by the State under this Contract.

ARTICLE IV. NO PARTNERSHIP

It is expressly understood and agreed by and between the State and the Concessionaire, that the State shall in no way be nor for any purpose become or be construed to become a partner of the Concessionaire in the conduct of its Concession business, or otherwise, or a joint venture or a member of a joint enterprise with the Concessionaire and the State does not assume responsibility for the Concessionaire's conduct or performance under this Contract. The State and the Concessionaire acknowledge and agree that there are no third-party beneficiaries to this Contract.

ARTICLE V. FORCE MAJEURE

- A. **State's Obligations.** The State shall not be liable for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including (but without limitation thereto) strikes, boycotts, picketing, slow-downs, work stoppages, or labor troubles of any other type, whether affecting the State or State's employees and agents.
- B. **State not Obligated to Supply Services.** The State shall not be obligated to supply any service or services, if and to the extent, and during any period, that the supplying of any such service or services, or the use of any component necessary therefor, shall be prohibited by any federal, state, or municipal law, rule, regulation, requirement, order, or direction, provided, however, that even if such prohibition does not expressly apply to the State, the State may choose to comply with such prohibition, in whole or in part, and in so choosing, the State shall not be obligated to supply any such service or services.
- C. **Fees Remain Payable.** Unless and only to the extent otherwise specified in this Contract, no abatement, diminution, or reduction of the rents, fees, or other charges payable by the Concessionaire shall be claimed by or allowed to the Concessionaire for any inconvenience, interruption, cessation, or loss of business or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances, or regulations of the United States of America, or of the State of Hawaii, or any county or municipal governments, or of any other municipal, governmental, or lawful authority whatsoever, or by priorities, rationing, curtailment, or shortage of labor or materials, nor shall this Contract be affected by any such causes.

ARTICLE VI. AUTHORITY

If the Concessionaire signs as a corporation, a limited liability company, or a partnership, each of the persons executing this Contract on behalf of the Concessionaire does hereby covenant and warrant that the Concessionaire is a duly authorized and existing entity, that the Concessionaire has and is duly qualified to do business in Hawaii, that the Concessionaire has full right and authority to enter into this Contract, and that each and all of the persons signing on behalf of the Concessionaire are authorized to do so. Upon the State's request, the Concessionaire shall provide the State evidence reasonably satisfactory to the State confirming the foregoing representations and warranties.

ARTICLE VII. CONSENTS

If the State is required to be reasonable in granting or withholding consent or approval, but fails to do so, the Concessionaire's sole and exclusive remedy is to seek specific performance, and in no event will the State be liable for any monetary damages. All approvals by the State shall be in writing.

ARTICLE VIII. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same document, binding all of the parties hereto notwithstanding all of the parties are not signatory to the original or the same counterpart. For all purposes, including, without limitation, recordation, filing and delivery of this Agreement, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages assembled as one document.

ARTICLE IX. GOVERNING LAW

This Contract shall be governed by, interpreted and construed in accordance with the laws of the State of Hawaii. Any action arising out of this Contract will be filed and maintained in the Circuit Court of the First Circuit of the State of Hawaii.

ARTICLE X. COMPLIANCE WITH LAWS

The Concessionaire shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the Concessionaire's performance of this Contract.

ARTICLE XI. SEVERABILITY

In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.

ARTICLE XII. WAIVER

The failure of the State to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the State's right to enforce the same in accordance with this Contract. The fact that the State specifically refers to one section of the Hawaii Revised Statutes and does not include provisions or statutory sections in the Contract shall not constitute a waiver or relinquishment of the State's rights or the Concessionaire's obligations under the statutes.

ARTICLE XIII. ENTIRE CONTRACT

This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the State and the Concessionaire relative to this Contract. This Contract 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 State and the Concessionaire other than as set forth or as referred to herein.

ARTICLE XIV. CONFLICT OF INTEREST

The Concessionaire represents that neither the Concessionaire, nor any employee or agent of the Concessionaire, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the Concessionaire's performance under this Contract.

ARTICLE XV. TERMINATION FOR CAUSE

In addition to any other remedies provided for by this Contract, if the State learns of a material breach of any provision of the Contract by Concessionaire, the State may at its sole discretion:

- (1) Provide an opportunity for the Concessionaire to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

ARTICLE XVI. POLLUTION CONTROL

If during the performance of this Contract, 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, Hawaii Revised Statutes, the Concessionaire shall immediately notify the State 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 State determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

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SECTION E—INFORMATION, REQUIREMENTS, AND REFERENCES

E.1. INFORMATION AND HYPERLINKS

State Parks Seeks Qualified Mobile Food Truck Providers for Multiple Parks Statewide

On August 12, 2022, the Board of Land and Natural Resources authorized the Division of State Parks to solicit for MFT services in a variety of parks statewide, including:

- Maui:** Mākena State Park (A & B locations), Wai‘ānapanapa State Park
Kaua‘i: Waimea Canyon State Park (Waimea Canyon Lookout, snacks/beverages only), Koke‘e State Park (Kalalau Lookout, snacks/beverages only), Wailua River State Park, Hā‘ena State Park
O‘ahu: Diamond Head State Monument, Ka‘ena Point State Park, Kaiwi State Scenic Shoreline, Nu‘uanu Pali State Wayside, Pu‘u ‘Ulaka‘a State Wayside, Sand Island State Recreation Area
Hawai‘i: ‘Akaka Falls State Park, Wailuku River State Park, Hāpuna Beach State Recreation Area, Kekaha Kai State Park, Wailoa River State Park

[How do I start one?](#)

If you’re interested in becoming a prospective bidder, you need to understand Hawaii’s requirements.

Bidders must submit all required documents and qualify in order to bid. Three-year concession contracts will be offered to the highest and most responsible qualified bidder, by location. Our intent is to begin receiving bids on these opportunities by January 24, 2025.

We plan to start on the island of Maui at Mākena State Park and Wai‘ānapanapa State Park. Several steps are still involved in getting these opportunities to a start date. There will be prequalification’s required of prospective bidders and a formal bid process.

Other considerations for prospective bidders:

- Generally, we will require 7 day/week operations, however some locations may be allowed to operate on a reduced schedule, in keeping with our desire to attract small businesses.
- Most, if not all locations will be offered only to the single, highest qualified bidder, to prevent clustering/crowding, and providing an exclusive right to provide food services in that location.
- Recognizing the sensitive natural and cultural settings within our parks, environmentally friendly packaging, containers, and utensils will be required at these locations, with severe restrictions on single-use plastic items. There will be a rubbish collection requirement as well.
- Winning vendors will be required to be a part of the park management team, providing park information, and reporting rules violations, etc.

- Please note that not all of these park locations will necessarily be offered, due to a variety of factors. Some offerings may be delayed due to park construction projects, etc.

Food Safety Requirements:

Food trucks must comply with food safety requirements. All Mobile Food Truck (“MFT”) Concessionnaires must have a valid Department of Health food establishment permit from their respective [District Health Offices’ Food Safety Branch](#) to place a bid or [Application](#). Contact the [Department of Health Food Safety Branch](#) for requirements. In addition to the Food Establishment application, operators need to submit a plan review of their mobile unit, as well as documentation that they have access to a permitted support kitchen to conduct their food prep, clean up, grey water disposal, food/utensil storage, clean water source, etc.

The owner of the MFT must adhere to all provisions provided for in [Hawaii Administrative Rules \(“HAR”\) Title 11, Chapter 50](#), Food Safety Code, and ensure that the food establishment permit remains active for the life of the concession contract.

What you need to know on the Plasticware Ordinances for the County Maui:

You can find the latest updates on policies for plasticware ordinances for each County and frequently asked questions (FAQs) with printable versions on the links below.

[County of Maui](#)

If you are interested in bidding on these opportunities, you may send an email of interest to Ms. Keiki, E. Kipapa at earleen.k.kipapa@hawaii.gov.

Formal announcements of the bid offerings will be posted on our [State Parks website](#).

Mahalo for your interest in providing food service to our park visitors!

Please click on the hyperlinks here or above to direct you to the correct websites:

1. [District Health Offices’ Food Safety Branch](#) by island
2. Application for [Food Establishment Permit](#):
 - a. [Island of Maui](#)
3. [Department of Health Food Safety Branch](#) statewide updates
4. [HAR Title 11, Chapter 50](#)
5. [County of Maui Bill 52 on Plastic Disposable Foodware; Ordinance 5084](#)
6. [How do I start one?](#)

E.2. MOBILE FOOD ESTABLISHMENTS: HOW DO I START ONE?



Mobile Food Establishments: HOW DO I START ONE?

A Mobile Food Establishment (Mobile FE) is a food establishment capable of being readily moved and operates in conjunction with a Support Kitchen. This includes, but is not limited to, trailer-type vehicles, lunchwagons, tour cruise boats, push carts and peddlers.

A passing inspection for the Mobile FE and Support Kitchen must be received from the Sanitation Branch before the Mobile FE can operate for business.

Support Kitchen requirements:

A Support Kitchen is required to have a current Food Establishment Permit and must be able to "support" the operation of the Mobile FE — this is determined by the inspector based on your business plan, menu, and the facilities of the proposed Support Kitchen. A Mobile FE may have more than one Support Kitchen. Private home kitchens are not allowed.

Applications & Forms

If the owner of the Mobile FE is not the owner of the Support Kitchen you must submit:

- ☐ "Application for Food Establishment Permit" & permit fee
Permit fee is based on the operations conducted at the Support Kitchen.
- ☐ "Support Kitchen Use Agreement" form
This form will detail operations conducted at the Support Kitchen and days & time of usage. This form requires the signature of the owner/agent of authority as consent to the use of their kitchen. If operation of a Mobile FE requires multiple Support Kitchens, an agreement form must be completed for each one. The form must be updated and submitted annually when the Food Establishment Permit for the Support Kitchen is renewed.

Mobile FE requirements:

Applications & Supporting Documents

- ☐ "Application for Food Establishment Permit", permit fee & menu
Permit fee is based on the menu and food operations conducted on the Mobile FE.
- ☐ "Application for Plan Review", plan review fee & plans (floor layout)
If a Mobile FE is to be built or purchased and was not previously approved by DOH, plans must be submitted. Plans do not have to be professionally made but must be drawn to scale. Top view & side view perspectives are required and should include placement of sink(s), equipment, pass-thru opening(s), etc. Push carts may need to provide additional information on equipment set-up and how the food and food contact surfaces will be protected. Upon approval of the plans, the Mobile FE can be constructed, purchased or set-up and prepared for inspection.



Mobile FE requirements (continued) :

Equipment Details

Sink(s):

A handwash sink is required when there is handling of open food. Water flow may be generated by gravity or an electric pump that allows both hands to be washed at the same time. Additional sink(s) and size of sink(s) will be determined based on the Mobile FE operation (food prep, warewashing, etc.). Mobile FE serving pre-packaged foods only does not require a sink.

Water tanks:

The potable water tank must be at least 5 gallons in capacity. The wastewater tank must be >15% in capacity than the potable water tank. Water tank capacity requirements will be based on the menu/ operations — more operations conducted on the Mobile FE will require more water. Water tanks must be of safe materials, durable, smooth, non-absorbent, and easily cleanable.

Food equipment:

Hot-holding units must maintain food temperature of $\geq 135^{\circ}\text{F}$.

Cold-holding units must maintain food temperature of $\leq 41^{\circ}\text{F}$.

Any equipment used for the operation of the Mobile FE must be physically attached to the unit. Serving tables, hibachis, coolers, and other equipment used for the Mobile FE food operation are not allowed to be set on the ground, outside Mobile FE. A trailer on wheels attached by a hitch to a Mobile FE may be allowed for cooking purposes only. All food handling must be conducted within the Mobile FE.

Pass-thru and openings:

Pass-thru window(s) are recommended to be no larger than 5 square feet and is required to have a closure that is able to be put into place when window is not in active use. If there are more than one pass-thru, it is recommended that they be spaced at least 2 feet apart. Openings must be screened and protected from entrance of vermin and pests.

Materials and surfaces:

All surfaces of the Mobile FE must be durable, smooth, non-absorbent, and easily cleanable.

.....

FAQ

Where can I find a Support Kitchen?

Any food establishment with a current permit with DOH may be used as a Support Kitchen.

Can I use my home kitchen as a Support Kitchen? No.

Where can I park and sell from my lunchwagon?

Contact City & County at (808)768-4385. We issue a food establishment permit but all Mobile FEs must comply with regulations of other agencies.

Can I cook outside of my lunchwagon? No.

All equipment to be used for Mobile FE operation must be on-board unit or attached to unit.

If you have additional questions, please contact your local Sanitation Branch office:

Oahu (808)586-8000 • Hilo (808)933-0917 • Kona (808)322-1507 • Maui (808)984-8230 • Kauai (808)241-3323

E.3. APPLICATION FOR FOOD ESTABLISHMENT PERMIT

SANITATION BRANCH
 54 HIGH STREET, ROOM 300, WAILUKU, HI 96793
 TELEPHONE NUMBER: (808) 984-8230 FAX: (808) 984-8237
 www.health.hawaii.gov

STATE OF HAWAII
 DEPARTMENT OF HEALTH

APPLICATION FOR FOOD ESTABLISHMENT PERMIT
 (Please type or print in blue or black ink)

ESTABLISHMENT NAME (dba)			
ESTABLISHMENT LOCATION ADDRESS			
STREET: _____			
CITY: _____		ZIP CODE: _____	
OWNER NAME (Corp., LLC, Partnership, Sole Owner, Other)			
EST. PHONE #: _____		OTHER PHONE #: _____	
MAILING ADDRESS (If different from establishment location address)			
ATTN: _____			
STREET: _____			
CITY: _____		STATE: _____	ZIP CODE: _____
E-MAIL ADDRESS (Optional)			
I UNDERSTAND THAT THE ISSUANCE OF THE FOOD ESTABLISHMENT PERMIT IS CONTINGENT UPON COMPLIANCE WITH THE REQUIREMENTS OF HAWAII ADMINISTRATIVE RULES, TITLE 11, CHAPTER 50, "FOOD SAFETY CODE," AND AFTER ISSUANCE, THE PERMIT MAY BE SUSPENDED OR REVOKED FOR FAILURE TO COMPLY WITH THE PROVISIONS OF THIS CHAPTER.			
DATE _____		SIGNATURE OF OWNER/AGENT OF AUTHORITY _____	
PHONE # OF OWNER/AGENT OF AUTHORITY _____		PRINT NAME _____	TITLE _____
(OFFICIAL USE ONLY)	FEE AMOUNT: _____ (Non-Refundable)	ESTABLISHMENT TYPE NUMBER: _____	RISK CATEGORY: _____
Payable to: STATE OF HAWAII			
Submit application and fee to:	SANITATION BRANCH 54 HIGH STREET, RM 300 WAILUKU, HI 96793		
THERE WILL BE A SERVICE FEE OF \$25.00 FOR ANY CHECK DISHONORED BY THE BANK.			

SECTION BELOW FOR OFFICIAL DEPARTMENT OF HEALTH USE ONLY

FLOOR AREA (IN SQ. FT.):	TAX MAP KEY:	ZONE:	SECTION:	PLAT:	PARCEL:
CIRCLE APPLICABLE OPERATIONS:					
1) RECEIVING	3) HOT STORAGE	5) TRANSPORTATION	7) REHEATING		
2) COLD STORAGE	4) THERMAL PROCESSING	6) COOLING	8) DISPLAY		
Fee Paid	Date Paid	Method of Payment		Receipt No.	Received By
APPROVED BY:					
Date _____		Signature of Agent/Dept. of Health _____		San district _____	
PERMIT NO.:			EXPIRATION DATE:		
CHECKED: SU _____	CLERICAL INPUT: _____	(PRE OP/ CLOSE) _____	(OP/ OPEN) _____	SCANNED: _____	

SAN APP FOOD 09/17

Table 7-1 ANNUAL AND RENEWAL PERMIT FEES SCHEDULE

FCOD ESTABLISHMENT TYPE	s.f. ¹ (size)	RISK CATEGORY	ANNUAL/ RENEWAL FEE
1. Catering	-	1	\$400
2. Catering	-	2	\$300
3. Catering	-	3	\$200
4. Convenience store	≤1,000	1	\$300
5. Convenience store	≤1,000	2	\$200
6. Convenience store	≤1,000	3	\$100
7. Food Manufacturer - small	≤1,000	1	\$300
8. Food Manufacturer - small	≤1,000	2	\$200
9. Food Manufacturer - small	≤1,000	3	\$100
10. Food Manufacturer - large	>1,000	1	\$400
11. Food Manufacturer - large	>1,000	2	\$300
12. Food Manufacturer - large	>1,000	3	\$200
13. Food Warehouse - small	≤1,000	-	\$100
14. Food Warehouse - large	>1,000	-	\$300
15. Hotel Main Kitchen/Banquet/Convention	-	1	\$600
16. Hotel Main Kitchen/ Banquet/Convention	-	2	\$500
17. High Risk Institutional Kitchens pre-schools, elementary schools, hospitals, other high-risk populations)	-	1	\$400
18. Institutional Kitchens schools, adult/child day care facilities, prisons, etc.)	-	1	\$400
19. Institutional Kitchens(schools, adult/child day care facilities, prisons, etc.)	-	2	\$300
20. Institutional Kitchens(schools, adult/child day care facilities, prisons, etc.)	-	3	\$100
21. Market - small	≤1,000	1	\$300
22. Market - small	≤1,000	2	\$200
23. Market - small	≤1,000	3	\$100
24. Market - large	>1,000	1	\$400
25. Market - large	>1,000	2	\$300
26. Market - large	>1,000	3	\$200
27. Mobile Lunchwagons, Trailers, Boats	-	1	\$300
28. Mobile Lunchwagons, Trailers, Boats	-	2	\$200
29. Mobile Lunchwagons, Trailers, Boats	-	3	\$100
30. Mobile Push Cart	-	1	\$150
31. Mobile Push Cart	-	2	\$100
32. Mobile Push Cart	-	3	\$50
33. Mobile Unit Support Kitchen	-	1	\$300
34. Mobile Unit Support Kitchen	-	2	\$200
35. Mobile Unit Support Kitchen	-	3	\$100
36. Restaurant - small	≤1,000	1	\$300
37. Restaurant - small	≤1,000	2	\$200
38. Restaurant - small	≤1,000	3	\$100
39. Restaurant - large	>1,000	1	\$400
40. Restaurant - large	>1,000	2	\$300
41. Restaurant - large	>1,000	3	\$200
42. Service Area - limited food prep	-	-	\$100
43. Service Area - no food prep	-	-	\$50
44. Any Food Establishment used only to prepare or serve food to the homeless without compensation, consideration, or donation by the person or persons being served	-	-	\$0

E.4. CONTACT INFORMATION

1. DEPARTMENT OF HEALTH – FOOD SAFETY BRANCH CONTACTS

<p>Maui District Health Office 54 S High Street, Room 300 Wailuku, HI 96793 Phone: (808)984-8230 FAX: (808)984-8237</p>	<p>Hawaii District Health/Hilo 1582 Kamehameha Avenue Hilo, HI 96720 Phone: (808)933-0917 FAX: (808)933-0400</p>	<p>Sanitation Branch/Kona Keakealani Building 79-1020 Haukapila Street, Room 115, Kona, HI 96750 Phone: (808)322-1507 FAX: (808)323-1511</p>
<p>Kauai District Health Office 3040 Umi Street Lihue, HI 96766 Phone: (808)241-3323 FAX: (808)241-3566</p>	<p>Honolulu Sanitation Branch 99-945 Halawa Valley Street Aiea, HI 96701 Phone: (808)586-8000 FAX: (808)586-8040</p>	

2. DEPARTMENT OF LAND AND NATURAL RESOURCES – DIVISION OF STATE PARKS CONTACTS

DSP Property Manager – Ms. E. Keiki Kipapa

office: (808) 587-0505
 cell: (808) 636-8497
 email: earleen.k.kipapa@hawaii.gov
 address: Kalanimoku Building
 DLNR, Division of State Parks
 1151 Punchbowl Street, Room 310
 Honolulu, HI 96813

DSP District Superintendent (Maui) – Mr. Larry Pacheco

office: (808) 984-8102
 cell: (808) 281-3691
 email: larry.j.pacheco@hawaii.gov
 address: DLNR, Division of State Parks
 Maui District Office
 54 S. High Street #101
 Wailuku, HI 96793

E.5. HAWAII ADMINISTRATIVE RULES CHAPTER 11-50 (Table only)

DEPARTMENT OF HEALTH
Amendment and Compilation of Chapter 11-50
Hawaii Administrative Rules

SEP 1 2017

SUMMARY

1. §§11-50-2 to 11-50-4 are amended.
2. §§11-50-5 and 11-50-6 are repealed.
3. §§11-50-7 to 11-50-14 are amended.
4. §§11-50-20 to 11-50-22 are amended.
5. §§11-50-30 to 11-50-35 are amended.
6. §11-50-37 is amended.
7. §§11-50-46 and 11-50-47 are amended.
8. §§11-50-49 and 11-50-50 are amended.
9. §§11-50-60 and 11-50-61 are amended.
10. §11-50-62 is repealed.
11. §11-50-71 is amended.
12. §11-50-73 is amended.
13. §11-50-81 is amended.
14. Subchapter 8 and Subchapter 9 are repealed.
15. Chapter 50 is compiled.

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HAWAII ADMINISTRATIVE RULES

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 50

FOOD SAFETY CODE

Subchapter 1 General Provisions

\$11-50-1	Purpose
\$11-50-2	Definitions
\$11-50-3	Permits, special events, homemade food products and hand pounded pci, and exemptions
\$11-50-4	Permit application, renewal, and HACCP plans
\$11-50-5	Repealed
\$11-50-6	Repealed
\$11-50-7	Fees
\$11-50-8	Inspection and correction of violations
\$11-50-9	Placarding
\$11-50-10	Embargo and detention
\$11-50-11	Prevention of foodborne disease transmission by employees
\$11-50-12	Permit suspension
\$11-50-13	Variances
\$11-50-14	Penalties and remedies
\$11-50-15	Severability
\$\$11-50-16 to	11-50-19 (Reserved)

Subchapter 2 Personnel

\$11-50-20	Supervision
\$11-50-21	Employee health
\$11-50-22	Personal cleanliness
\$11-50-23	Hygienic practices
\$\$11-50-24 to	11-50-29 (Reserved)

Subchapter 3 Food

\$11-50-30	Characteristics
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\$11-50-31 Source, specifications for receiving,
original containers and records
\$11-50-32 Protection from contamination after
receiving
\$11-50-33 Destruction of organisms of public health
concern
\$11-50-34 Limitation of growth of organisms of public
health concern
\$11-50-35 Food identity, presentation, and
on-premises labeling
\$11-50-36 Contaminated food
\$11-50-37 Special requirements for highly susceptible
populations
\$\$11-50-38 to 11-50-44 (Reserved)

Subchapter 4 Equipment, Utensils, and Linens

\$11-50-45 Materials for construction and repair
\$11-50-46 Design and construction
\$11-50-47 Numbers and capacities
\$11-50-48 Location and installation
\$11-50-49 Maintenance and operation
\$11-50-50 Cleaning of equipment and utensils
\$11-50-51 Sanitization of equipment and utensils
\$11-50-52 Laundering
\$11-50-53 Protection of clean items
\$\$11-50-54 to 11-50-59 (Reserved)

Subchapter 5 Water, Plumbing, and Waste

\$11-50-60 Water
\$11-50-61 Plumbing system
\$11-50-62 Repealed
\$11-50-63 Sewage, other liquid waste, and rainwater
\$11-50-64 Refuse, recyclables, and returnables
\$\$11-50-65 to 11-50-69 (Reserved)

Subchapter 6 Physical Facilities

\$11-50-70 Materials for construction and repair
\$11-50-71 Design, construction, and installation
\$11-50-72 Numbers and capacities
\$11-50-73 Location and placement

§11-50-74 Maintenance and operation
§§11-50-75 to 11-50-79 (Reserved)

Subchapter 7 Poisonous or Toxic Materials

§11-50-80 Labeling and identification
§11-50-81 Operational supplies and applications
§11-50-82 Stock and retail sale
§§11-50-83 to 11-50-84 (Reserved)

Subchapter 8 Mobile Food Establishments - Repealed

§§11-50-85 to 11-50-94 Repealed

Subchapter 9 Temporary Food Establishments -
Repealed

§§11-50-95 to 11-50-104 Repealed

Historical Note: Chapter 11-50, Hawaii Administrative
Rules is based substantially on Chapter 11-12, Food
Establishment Sanitation, Department of Health, State of
Hawaii. [Eff 11/22/96; comp 3/15/99; comp 6/15/2007;
R 2/24/14]

E.6. MAUI COUNTY ORDINANCE NO. 5084 — BILL NO. 52 (2020)

ORDINANCE NO. 5084

BILL NO. 52 (2020)

**A BILL FOR AN ORDINANCE AMENDING CHAPTER 20.26,
MAUI COUNTY CODE, RELATING TO THE SALE AND USE
OF PLASTIC DISPOSABLE FOODWARE**

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Because of its ability to break down into small and microscopic fragments that persist for decades, plastic disposable foodware has significant negative impacts on the environment, contributes to the potential death of marine animals and avian populations through ingestion, and has been found to be ingested by humans in microplastic form through the food chain. Plastic disposable foodware, such as straws, has also been found to cause significant physical harm to marine animals and avian populations prior to and after breaking down into fragments.

The Countywide Policy Plan, the top-level component of the County of Maui 2030 General Plan, directs the Council to “improve waste-disposal practices and systems to be efficient, safe, and as environmentally sound as possible,” to create policies that “provide sustainable waste-disposal systems and comprehensive, convenient recycling programs to reduce the flow of waste into landfills,” and to “develop strategies to promote public awareness to reduce pollution and litter, and encourage residents to reduce, reuse, recycle, and compost waste materials.”

These objectives are also consistent with the 2030 solid waste reduction goals articulated by the State-level Aloha+ Challenge, to which Maui County is a partner, that seeks to “support changes in design, material use, and manufacturing that reduce waste and toxicity” and to “significantly reduce the annual generation of solid waste.”

Another partner to the Aloha+ Challenge is the City and County of Honolulu, whose City Council approved one of the strictest bans on plastics in the country on December 4, 2019, and whose mayor signed the bill into law on December 15, 2019. Other jurisdictions that have adopted similar plastic bans include the City of Malibu, California, and the City of Seattle, Washington.

By Ordinance 4457 (2017), the Council prohibited polystyrene foam food service containers, effective December 31, 2018. The Council finds that this prohibition has been effective in keeping such material from entering the environment and that further regulation is warranted.

The Council finds and declares that, to protect the County's unique environment and the health and welfare of its marine and avian life, to prevent microplastics from entering the food chain, and to advance the General Plan's objectives, plastic disposable foodware must be regulated.

SECTION 2. Chapter 20.26, Maui County Code, is amended to read as follows:

"Chapter 20.26

**[POLYSTYRENE FOAM FOOD SERVICE CONTAINERS]
PLASTIC DISPOSABLE FOODWARE**

Sections:

- 20.26.010 Purpose.
- 20.26.020 Definitions.
- 20.26.030 Administration.
- 20.26.040 Prohibitions.
- 20.26.050 Exemptions.
- 20.26.060 Violation and penalties.
- 20.26.070 Public information.
- 20.26.080 No conflict with federal or state law.
- 20.26.090 [Council review.] Effective date.

20.26.010 Purpose. The purpose of this chapter is to promote public health, reduce litter, and limit harmful materials from entering the environment: by [the regulation] regulating and limiting of the use of [polystyrene foam food packaging by food providers] plastic disposable foodware; and [encourage] encouraging the use of environmentally preferred alternatives, such as [containers] foodware made from [recyclable and] compostable materials.

20.26.020 Definitions. Whenever used in this chapter, unless the context otherwise requires:

["Affordable" means purchasable for not more than forty percent more than the purchase cost of an equivalent polystyrene foam food service container.]

"ASTM Standard" means the American Society for Testing and Materials (ASTM) International Standard.

"Compostable" means materials that [are able to] can undergo biological decomposition or become part of usable compost in a safe and timely manner, either in an appropriate composting program or facility, or in a home compost pile or device. To qualify as compostable, such food service containers must meet ASTM Standard D6400 for Compostable Plastics, as amended.

"Department" means the department of environmental management.

"Director" means the director of environmental management.

"Disposable" means something designed to be discarded after a single or limited number of uses and not designed or manufactured for long-term multiple re-use.

“Foodware” means food service containers and utensils.

“Food provider” means any [entity or] person providing prepared food for consumption within the County, including any store, shop, sales outlet, restaurant, bar, pub, coffee shop, cafeteria, caterer, convenience store, liquor store, grocery store, supermarket, delicatessen, food truck, catering vehicle or cart, or roadside stand.

“Food service container” means all plates, trays, cups, bowls, cartons, and hinged or lidded containers (clamshells) on or in which any foods or beverages are placed or packaged or intended to be placed or packaged [and designed for one-time use].

“Plastic” means any material made, in whole or in part, from petroleum or petrochemical compounds, including so-called biodegradable products, where any portion is not compostable. “Plastic” also means all forms of polystyrene, polyethylene, polypropylene, and polycarbonate, or petrochemical polymeric compounds and additives that can be shaped by flow.

“Polystyrene foam” means blown polystyrene and expanded and extruded foams that are thermoplastic petrochemical materials utilizing a styrene monomer and processed by techniques including fusion of polymer spheres (expandable bead polystyrene), injection molding, foam molding, and extrusion-blown molding (extruded foam polystyrene). Polystyrene foam does not include clear or solid polystyrene (oriented polystyrene).

“Prepackaged food” means food and beverages contained in plastic disposable foodware that has been filled and sealed entirely outside the County or in a manner intended to prevent the food or beverage from having any direct human contact, such as shelf-stable food and beverages; condiment packets, poi bags, musubi wraps, plastic film, chip bags, cookie and cracker wrappers, bread bags, meal kits, ice bags; beverage-related bottles or cartons; packaging for unprepared food; and packaging for wholesale distribution of prepared food, baked goods, and dairy products.

“Prepared food” means any food or beverage prepared for consumption using any cooking[, packaging,] or food preparation technique, including chopping, slicing, mixing, brewing, freezing, or squeezing, [and] or otherwise prepared for consumption. “Prepared food” includes restaurant-style food and beverages that are packaged after being ordered and ready for consumption without further preparation.

“Recyclable” means used or waste materials that can be treated or processed to be made suitable for reuse, whether in their original form or with minimal alterations. For the purposes of this chapter, recyclable materials do not include polystyrene foam.]

“Shelf-stable food” means prepared food that can be stored at room temperature and does not require refrigeration, freezing, or heating for food safety purposes.

“Utensils” means implements used in the consumption of food or drink, such as forks, knives, spoons, straws, coffee stirrers, cocktail picks, and chopsticks, excluding those contained within or attached to prepackaged food.

20.26.030 Administration. A. The director [shall] must administer this chapter and adopt administrative rules [pursuant to] in accordance with chapter 91, Hawaii Revised Statutes[, within two hundred seventy days from the date of adoption of this ordinance.]

B. On or before September 1 of each [anniversary of the effective date,] year, the director [shall] must submit to the council a report detailing compliance with this chapter, including the number and type of exemptions granted.

20.26.040 Prohibitions. Except as provided in section 20.26.050:

A. Food providers [shall] must not sell, use, provide, or offer the use of [polystyrene foam food service containers.] plastic disposable foodware.

B. [Polystyrene foam food service containers shall] Plastic disposable foodware must not be sold, used, provided, or offered for use at any County facility, County-authorized concession, County-sponsored or County-permitted event, or County program.

C. [Polystyrene foam food service containers shall] Plastic disposable foodware must not be sold, used, provided, or offered for sale or sold in the County.

D. Nothing in this chapter precludes food providers from using or making available non-plastic alternative utensils, such as those made from paper, sugar cane, or bamboo; except, however, that non-plastic utensils must only be provided upon the request or affirmative response of a person being provided the prepared food or beverage or in a self-service area or dispenser.

20.26.050 Exemptions. This chapter [shall] does not apply to any of the following:

A. [Polystyrene foam food containers] Plastic disposable foodware used for raw or butchered meats, poultry, [fish,] seafood, unprepared produce, or eggs, unless provided for consumption without further food preparation. (e.g., sashimi and poke).

B. [Polystyrene foam coolers and ice chests specifically designed and manufactured for multiple re-use.

C.] Foam blocks or pieces used as protective packaging during shipping (e.g., packing peanuts).

[D. Packaging] C. Use or sale of plastic disposable foodware in situations unique to the type of food, where there are no reasonable alternatives to [polystyrene foam food service containers, provided] plastic disposable foodware if the food provider applies for an exemption and such exemption is granted by the director.

[E. Packaging] D. Use or sale of plastic disposable foodware in situations unique to the food provider, where compliance with this chapter would cause significant hardship and there is no reasonably affordable alternative to [polystyrene foam food service containers, provided] plastic disposable foodware if the food provider applies for an exemption and such exemption is granted by the director. A price for a product that is more than 40 percent higher than a comparable plastic product is not reasonably affordable.

[F. Packaging] E. Use or sale of plastic disposable foodware in any situation deemed by the County to be an emergency requiring the immediate preservation of life, health, property, safety, or essential public services. This exemption [shall] must be in place until the emergency has ceased or the mayor has determined the exemption is no longer applicable to the situation.

F. Prepackaged food, not including polystyrene foam food service containers.

G. Disposable plastic straws, if requested and used by persons with disabilities.

H. Disposable plastic straws used at hospitals, nursing facilities, assisted living facilities, adult residential care homes, hospice service agencies or homes, home health agencies, and home care agencies.

20.26.060 Violation and penalties. A. Violations of this chapter [shall be] are subject to the civil penalties and enforcement procedures of section 19.530.030, [of this code.]

B. Fines collected [pursuant to] under this chapter [shall] must be deposited into the [solid waste management] environmental protection and sustainability fund.

20.26.070 Public information. A. Restrictions in this chapter on the use of [polystyrene foam food service containers shall] plastic disposable foodware must be set forth on all application forms for permits relating to County facilities, County-managed concessions, County-sponsored or County permitted events, or County programs.

B. The department must engage in an education and outreach campaign in coordination with community and business partners to facilitate implementation of this chapter.

20.26.080 No conflict with federal or state law. Nothing in this chapter [shall] may be interpreted or applied so as to create any requirement or duty in conflict with any federal or state law.

20.26.090 [Council review. The council shall review this chapter in 2021.] **Effective date.** Except for polystyrene foam food service containers, the prohibitions of this chapter related to plastic disposable foodware take effect January 1, 2022."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



RICHELLE M. THOMSON
Department of the Corporation Counsel
County of Maui

paf:ans:20-120b

