STATE OF HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of State Parks
Honolulu, Hawaii 96813

October 23, 2020

Board of Land and Natural Resources
State of Hawai‘i
Honolulu, Hawai‘i

SUBJECT: Request approval to Amend Concession Contract No. IFB No. DLNR-SP-2017-01, Pro Park, Inc., Concessionaire, Diamond Head State Monument, Kapahulu, Waikiki, Honolulu, O‘ahu, Hawai‘i, Tax Map Key: (1) 3-1-042:026.

The purpose of this amendment is to update the terms of the concession contract to incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6 and increase the monthly percentage rent.

APPLICANT:

Pro Park, Inc.

LEGAL REFERENCE:

Hawai‘i Revised Statutes Sections 171-6 and 55 as amended. Hawai‘i Administrative Rules (HAR) Chapter 13-146, Section 13-146-5 and Section 13-146-6 (Fees), as amended.

LOCATION:

Portion of Government Land located in Diamond Head State Monument, Kapahulu, Waikiki, Honolulu, O‘ahu, Hawai‘i, Tax Map Key: (1) 3-1-042:026, as shown on the map attached as Exhibit A.

AREA:

Approximate five (5) acres, more or less

ZONING:

State Land Use District: Conservation, Urban
County of Honolulu: P-1 Restricted Preservation District, P-2 General Preservation District

ITEM E-7
TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Governor’s Executive Order 2000 setting aside land for state park purposes to be under the control and management of the State of Hawai‘i, Department of Land and Natural Resources, Division of State Parks.

BACKGROUND:

The Hawai‘i Department of Land and Natural Resources’ DSP is responsible for managing the use and protection of all lands, and historical and natural resources within the Hawai‘i State Park System, established under Chapter 13-146, Hawaii Administrative Rules (HAR). The new fee schedule in Chapter 13-146 helps improve revenue-generating potential for the Division of State Parks (DSP) to better manage the Hawai‘i State Park System that is composed of some of the State’s most valuable, scenic, historic, culturally significant, and acclaimed natural and cultural resources.

The purpose of this request is to update the terms of the concession contract to adjust for DSP’s new fee schedule.

REMARKS:

The current revocable permit currently provides for a rent of $102,000.00 per month or 87% of gross receipts per month. We are asking the Board to approve a ninety-nine percent (99%) of net operating income for the monthly rent.

Following the adoption of HAR13-146 Increase Fees, in the new fees would result in a windfall for the permit holder without adjustment to the rent.

The adjustment of the terms will help capture the windfall that results from the new fee schedule. Parks has worked with the permittee on the new monthly rent and feels the Board can authorize the change.

The subject concession contract was issued pursuant to Section 171-55, HRS. The statutory language allows the Board to issue a permit, “... by direct negotiation without public auction, under conditions and rent which will serve the best interests of the State ...” Under the current circumstances, Parks believes that the statute provides grounds for the Board to modify the rent as warranted.

Staff recommends the Board approve a monthly rent of 99% of net operating income for the duration of the terms. The new rent will be effective thirty-days (30) from the approval by the Board. In addition, staff recommends Concession Contract No. IFB No. DLNR-SP-2017-01 incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6.

2
RECOMMENDATION: That the Board:

1. Approve the updated Concession Contract No. IFB No. DLNR-SP-2017-01 to incorporate the increased fees set in HAR Chapter 13-146, Section 13-146-6 and;

2. Adjust the rent payable to ninety-nine percent (99%) of net operating income per month.

Respectfully Submitted,

[Signature]
Curt Cottrell, Administrator
Division of State Parks

APPROVED FOR SUBMITTAL:

[Suzanne D. Case]

Suzanne D. Case, Chairperson
Board of Land and Natural Resources

Attachments: Exhibit A
STATE OF HAWAII
SURVEY DIVISION
DEPT. OF ACCOUNTING AND GENERAL SERVICES
HONOLULU

DIAMOND HEAD STATE MONUMENT
PARCELS A, B, C and D
Kapahulu, Waikiki, Honolulu, Oahu, Hawaii

Being portions of L.P. 8165, Part Bon a portion of L.C.Aw. 8559-B Apuna. 32 to William C. Lanualilo.

Being also portions of the land conveyed to the Minister of Interior by the Trustee of William C. Lunalilo Estate by Deed dated June 17, 1884, and recorded in Liber 88 on Pages 223 and 224 (Land Office Deed 136).

PARCEL A -- Beginning at the north corner of this parcel of land, the true azimuth and distance from U. S. Military Reservation Monument 10 being 41° 08' 50" 9.50 feet, and the coordinates of said point of beginning referred to Government Survey Triangulation station "LEAHI" being 3005.21 feet North and 565.90 feet East, as shown on Government Survey Registered Map H.T.S. Plat 2145-H, thence running by azimuths measured clockwise from True South:

1. 328° 52' 91.30 feet along Diamond Head Reservoir Lot, Governor's Executive Order 605;
2. 41° 00' 130.00 feet along Diamond Head Reservoir Lot, Governor's Executive Order 605;
3. 311° 00' 430.00 feet along Diamond Head Reservoir Lot, Governor's Executive Order 605;
4. 234° 49' 13" 318.81 feet along Diamond Head Reservoir Lot, Governor's Executive Order 605;
5. 333° 08' 46° 80.00 feet along Port Ruger Military Reservation, Tract 1-C of Presidential Executive Order 10648 dated December 8, 1955;
6. 57° 15' 45" 1100.75 feet along Parcel B, DIAMOND HEAD STATE MONUMENT, hereinbelow described;
7.  $37^\circ$ 30'$ 900.00$ feet along Parcel B, DIAMOND HEAD STATE MONUMENT, hereinbelow described;

8.  $30^\circ$ 00'$ 765.00$ feet along Parcel B, DIAMOND HEAD STATE MONUMENT, hereinbelow described to the middle of gulch;

Thence along the middle of gulch along Parcel D, DIAMOND HEAD STATE MONUMENT, for the next five (5) courses, the direct azimuths and distances between points in the middle of said gulch being:

9.  $115^\circ$ 00' 100.00 feet;
10. $174^\circ$ 39' 47.70 feet;
11. $106^\circ$ 30' 100.00 feet;
12. $116^\circ$ 00' 130.00 feet;
13. $75^\circ$ 00' 80.00 feet;

14.  $207^\circ$ 13' 967.00 feet along Land Court Application 972 to U. S. Military Reservation Monument 12;

15.  $224^\circ$ 30' 931.86 feet along Land Court Application 972 to U. S. Military Reservation Monument 11;

16.  $231^\circ$ 08' 50'' 841.34 feet along Land Court Application 111 to the point of beginning and containing an Area of 26.081 Acres.

PARCEL B -- Beginning at Government Survey Triangulation Station "LE.AKI" (Diamond Head) situated at the highest point on the southwesterly rim of Diamond Head Crater, thence running by azimuths measure clockwise from True South:

Along the rim of Diamond Head Crater, along Diamond Head Reservation, Governor's Executive Order 1997, for the first six (6) courses, the direct azimuths and distances between points on said rim of Diamond Head Crater being:

1.  $302^\circ$ 44' 347.70 feet to a spike;

2.  $304^\circ$ 13' 30'' 567.50 feet;
<table>
<thead>
<tr>
<th>Course</th>
<th>Azimuth</th>
<th>Distance</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>290° 50'</td>
<td>575.00 feet</td>
<td>to a &quot;x&quot; cut on top of concrete pillbox;</td>
</tr>
<tr>
<td>2.</td>
<td>293° 30'</td>
<td>400.00 feet</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>261° 32' 30&quot;</td>
<td>833.20 feet</td>
<td>to an iron pin;</td>
</tr>
<tr>
<td>4.</td>
<td>242° 47'</td>
<td>741.60 feet</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>320° 46' 30&quot;</td>
<td>305.40 feet</td>
<td>down slope along Diamond Head Reservation, Governor's Executive Order 1997;</td>
</tr>
<tr>
<td>6.</td>
<td>61° 00' 00&quot;</td>
<td>320.00 feet</td>
<td>along Parcel C, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>7.</td>
<td>70° 00' 00&quot;</td>
<td>680.00 feet</td>
<td>along Parcel C, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>8.</td>
<td>91° 00' 00&quot;</td>
<td>1410.00 feet</td>
<td>along Parcel C, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>9.</td>
<td>100° 00' 00&quot;</td>
<td>1290.00 feet</td>
<td>along Parcel C, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>10.</td>
<td>127° 00' 00&quot;</td>
<td>610.00 feet</td>
<td>along Parcel C, DIAMOND HEAD STATE MONUMENT, hereinbelow described to U. S. Military Reservation Monument 24;</td>
</tr>
<tr>
<td>11.</td>
<td>115° 35' 00&quot;</td>
<td>222.00 feet</td>
<td>along Land Court Application 873 to U. S. Military Reservation Monument 23;</td>
</tr>
<tr>
<td>12.</td>
<td>205° 21' 35&quot;</td>
<td>195.54 feet</td>
<td>along Reservoir Site to U. S. Military Reservation Monument 22;</td>
</tr>
<tr>
<td>13.</td>
<td>116° 32' 40&quot;</td>
<td>279.77 feet</td>
<td>along Reservoir Site to U. S. Military Reservation Monument 21;</td>
</tr>
<tr>
<td>14.</td>
<td>210° 00' 00&quot;</td>
<td>1590.00 feet</td>
<td>along Parcel D, hereinbelow described, and Parcel A, hereinabove described;</td>
</tr>
<tr>
<td>15.</td>
<td>217° 30' 00&quot;</td>
<td>900.00 feet</td>
<td>along Parcel A, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>16.</td>
<td>237° 15' 45&quot;</td>
<td>1100.75 feet</td>
<td>along Parcel A, DIAMOND HEAD STATE MONUMENT, hereinbelow described;</td>
</tr>
<tr>
<td>17.</td>
<td>333° 08' 40&quot;</td>
<td>248.70 feet</td>
<td>up slope, along Diamond Head Reservation, Governor's Executive Order 1997, to the rim of Diamond Head Crater;</td>
</tr>
</tbody>
</table>

"Hence along the rim of Diamond Head Crater along Diamond Head Reservation, Governor's Executive Order 1997, for the next seven (7) courses, the direct azimuths and distances between points on said rim of Diamond Head Crater being:

<table>
<thead>
<tr>
<th>Course</th>
<th>Azimuth</th>
<th>Distance</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>20.</td>
<td>58° 31' 00&quot;</td>
<td>126.10 feet</td>
<td>to a spike;</td>
</tr>
<tr>
<td>21.</td>
<td>52° 14' 00&quot;</td>
<td>597.80 feet</td>
<td>to a spike;</td>
</tr>
<tr>
<td>22.</td>
<td>41° 00' 00&quot;</td>
<td>385.00 feet</td>
<td></td>
</tr>
</tbody>
</table>
CSF NO. 13,650
April 3, 1962

PARCEL D — Beginning at concrete monument 18 at the southwest corner of this parcel of land and the southeast corner of Grant 3381 to James Campbell, (Diamond Head Terrace, File Plan 214), the coordinates of said point of beginning referred to Government Survey Triangulation Station "LEAH!" being 206.92 feet South and 1373.99 feet West, as shown on Government Survey Registered Map H.T.S. Plat 2145-H, thence running by azimuths measured clockwise from True South:

1. 162° 31' 20" 364.95 feet along Grant 3381 to James Campbell (Diamond Head Terrace, File Plan 214) to concrete monument 12-B;
2. 209° 57' 20" 705.81 feet to concrete monument 12-A;
3. 207° 13' 105.00 feet to the middle of gulch;
4. 255° 00' 80.00 feet;
5. 296° 00' 130.00 feet;
6. 285° 30' 100.00 feet;
7. 354° 39' 47.70 feet;
8. 295° 00' 100.00 feet;
9. 30° 00' 825.00 feet along Parcel B hereinabove described;
10. 40° 14' 312.27 feet along Reservoir Site (Part II of Presidential Executive Order 1377, dated June 26, 1911);
11. 130° 14' 81.46 feet along land owned by the State of Hawaii to the point of beginning and containing an area of 9.474 Acres.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

Compiled from Gov't. Survey Records.

By Akira Tega
Land Surveyor
DIAMOND J-LEAD SITe. MONUMENTI
PARCELS A, B, CANDD
Kapahulu, Wai`ale`ale, Honolulu, Oahu, Hawaii
Scale 'in = 4000ft.

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII