

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Boating and Ocean Recreation
Honolulu, Hawaii 96819

January 23, 2026

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: Sale of Concession by Sealed Bid for a Five-Year Mobile Food Concession Situated at Ala Wai Small Boat Harbor, Honolulu, Oahu, Hawaii, Identified by Tax Map Key: (1) 2-3-037: portion of 012; And

Declare the Project Exempt from Preparation of an Environmental Assessment under Chapter 343, Hawaii Revised Statutes and Title 11, Chapter 200.1, Hawaii Administrative Rules.

REQUEST:

Authorization to issue an Invitation for Bids ("IFB") for a Five-year Mobile Food concession contract situated at Ala Wai Small Boat Harbor.

LEGAL REFERENCE:

Sections §171-56 and Chapter 102 Hawaii Revised Statutes ("HRS"), as amended.

LOCATION:

Portion of Government fast lands at Ala Wai Small Boat Harbor ("AWSBH") situated at 1651 Ala Moana Boulevard, Honolulu, Island of Oahu, Hawaii, identified by Tax Map Key: (1) 2-3-037: portion of 012 and as shown on the attached maps labeled **Exhibits A-1 thru A-4**. Said premises are on a portion of Governor's Executive Order No. 4604.

AREA:

Approximately 300 square feet, more or less.

ZONING:

State Land Use District: Urban
County of Honolulu CZO: Public Precinct – Waikiki Special District

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:

The Premises is presently encumbered by Concession Contract IFB No. LO-23-001 to Blue Water Shrimp International LLC that expires June 30, 2026.

CHARACTER OF USE:

Vehicle Mobile Food Concession

CONCESSION CONTRACT TERM:

Five (5) Years from the commencement date of the concession contract.

MOBILE FOOD CONCESSION COMMENCEMENT DATE:

July 1, 2026, thru June 30, 2031, or as determined by the Chairperson

MINIMUM UPSET MONTHLY RENT:

The minimum upset monthly rental shall be four thousand dollars (\$4,000) or ten percent (10%) of gross receipts, whichever is greater.

METHOD OF PAYMENT:

The base rent shall be paid monthly in advance on or before the 1st of each month. The gross receipts report and associated payment shall be paid no later than 15 calendar days following the end of the billable month.

PERFORMANCE BOND:

Two (2) times the monthly rent.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred in by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General

Exemption Type 1, “Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing,” Item No. 44, which states, “Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing.”

CONSULTED AGENCIES:

| Agency | Comments | Date Received | Received by |
|---|--|---------------|-------------|
| Land Division (LD) | “Oahu District Land Office does not have any comments on the subject submittal.” | Dec. 22, 2025 | Email |
| Division of Aquatic Resources (DAR) | No response by suspense date. | N/A | N/A |
| Office of Conservation and Coastal Lands (OCCL) | No response by suspense date. | N/A | N/A |
| Office of Hawaiian Affairs (OHA) | No response by suspense date. | N/A | N/A |

PUBLIC TRUST ANALYSIS:

Dispositions of ceded lands, including concessions must be consistent with the public trust. In order to make that determination, the Board must consider the following:

1. Presumption in favor of public use.
2. Consideration of practicable alternatives.
3. Clear articulation of the decision.

A presumption in favor of public use at Ala Wai Small Boat Harbor would require that the harbor's lands and facilities remain primarily available for boating, recreation, and navigational purposes. The proposed concession must therefore be evaluated against whether it enhances or detracts from these public uses. In this case, a mobile food concession can support the boating public and recreational users by providing convenient food services within the harbor area. The use is compatible with existing harbor operations, does not obstruct boating access, and does not diminish recreational opportunities.

An alternative to allowing the concession would be to leave the parcel or designated concession space vacant. However, leaving the area unused would not provide any added public benefit, would forego potential revenue to the Boating Special Fund, and

would deny harbor users convenient amenities. Other alternatives, such as relocating the concession outside the harbor, would reduce accessibility for harbor tenants, boaters, and the public who frequent Ala Wai Harbor. The proposed disposition is more practicable than foregoing the concession.

The mobile food concession is not an exclusive use of a large parcel of land, it encompasses a total of 300 square feet. It does not restrict public access to harbor facilities, piers, or shoreline areas. It improves the harbor environment by offering legitimate, managed services in a space that might otherwise invite unauthorized vending or informal uses. Safety and sanitation are regulated under the Department of Health rules, minimizing potential risks.

Concessions for ceded lands also support the public trust purposes contained in Section 5(f) of the Admissions Act. Revenues from concessions on ceded lands paid to the Office of Hawaiian Affairs contribute to the betterment of the conditions of native Hawaiians. The revenues also support the Department's programs to provide lands for public use which is another public trust purpose.

DOBOR is responsible for managing the State's small boat harbors, including Ala Wai, which is the largest small boat harbor in the State and one of the most heavily used. The Department must balance its fiduciary duty to preserve public access with the practical need to generate revenue to sustain operations. Authorizing the mobile food concession allows DOBOR to allocate limited resources more effectively while ensuring that public trust obligations are met.

BACKGROUND:

At its meeting on May 11, 2012, under agenda Item J-1, the Board approved the Sale of Concession by Sealed Bid for a Mobile Concession located at AWSBH¹. The concession was awarded to Galley Foods LLC. Galley Foods LLC operated in the space for the initial five-year concession which commenced March 1, 2013, and ended on February 28, 2018, and extend the term of the concession for an additional five-years, from March 1, 2018, thru February 28, 2023.

Galley Foods LLC paid the greater of \$1,705 per month or 10% of gross receipts. Staff recommended an increase of the upset minimum monthly rent due to the Galley Foods LLC consistently hitting percentage rent, pre-pandemic.

At its meeting on December 10, 2021, under agenda Item J-1, the Board approved the Sale of Concession by Sealed Bid for a Three-Year Mobile Concession located at AWSBH². The concession was awarded to Blue Water Shrimp International LLC

¹ May 11, 2012, under agenda Item J-1, Board of Land and Natural Resources submittal can be found at <https://files.hawaii.gov/dlnr/meeting/submittals/120511/J-BD-Submittals-J1.pdf>

² December 10, 2021, under agenda Item J-1, Board of Land and Natural Resources submittal can be found at <https://dlnr.hawaii.gov/wp-content/uploads/2021/12/J-1.pdf>

(“concessionaire”). The concessionaire is currently operating in the space under concession contract LO-23-001, for a period of three (3) years commencing on July 1, 2023, and ending on June 30, 2026. Blue Water Shrimp International LLC pays \$4,525 per month or 10% of gross receipts.

There continues to be strong interest in this concession space from other food truck operators. In anticipation of the contract’s expiration on June 30, 2026, staff is submitting this request to allow sufficient time to prepare the necessary documentation and conduct the bidding process prior to the end of the existing concession term.

RECOMMENDATION:

That the Board of Land and Natural Resources:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200.1-15, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Authorize the sale of concession by sealed bid for Mobile Food services under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - a. The standard terms and conditions of the most current concession contract form, as may be amended from time-to-time;
 - b. Review and approval by the Department of the Attorney General; and
 - c. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,



MEGHAN L. STATTS, Administrator
Division of Boating and Ocean Recreation

APPROVED FOR SUBMITTAL:



RYAN KANAKA'OLE, Acting Chairperson
Board of Land and Natural Resources

Attachments:

- A-1 Ala Wai Small Boat Harbor on Island of Oahu
- A-2 Concession Location at Ala Wai Small Boat Harbor
- A-3 Concession Location in Parking Lot
- A-4 Concession Area
- B Current Concession Contract issued to Blue Water Shrimp International LLC

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200.1, HAR

| | |
|--|---|
| Project Title: | Sale of Concession by Sealed Bid for a Five-Year Mobile Food Concession Situated at Ala Wai Small Boat Harbor, Honolulu, Oahu, Hawaii, Identified by Tax Map Key: (1) 2-3-037: portion of 012; And Declare the Project Exempt from Preparation of an Environmental Assessment under Chapter 343, Hawaii Revised Statutes and Title 11, Chapter 200.1, Hawaii Administrative Rules. |
| Project / Reference No.: | None |
| Project Location: | Ala Wai Small Boat Harbor, Honolulu, Oahu, Hawaii, Identified by Tax Map Key: (1) 2-3-037: portion of 012. |
| Project Description: | Sale of Concession by Sealed Bid for a Five-Year Mobile Food Concession |
| Chap. 343 Trigger(s): | Use of State lands |
| Exemption Class No(s): | In accordance with Section 11-200.1-15, Hawaii Administrative Rules (HAR) and the Exemption List for the Department of Land and Natural Resources, reviewed and concurred by the Environmental Council on November 10, 2020, the subject request is exempt from the preparation of an Environmental Assessment pursuant to General Exemption Type 1, "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving minor expansion or minor change of use beyond that previously existing," Part 1, Item No. 44, which states, "Permits, licenses, registrations, and rights-of-entry issued by the Department that are routine in nature, involving negligible impacts beyond that previously existing." |
| Cumulative Impact of Planned Successive Actions in Same Place Significant? | Activities in the subject area have resulted in no known significant impact to the natural and environmental resources in the area. |
| Action May have Significant Impact on Particularly Sensitive Environment? | The requested area is a portion of the Ala Wai Small Boat Harbor that is visited by the community, tourists, and commercial operators and is impacted by human activity. Staff believes there would be no significant impact to sensitive environmental or ecological receptors. |
| Analysis: | Based on the above mentioned, staff believes there would be no significant impact to the environment. |
| Consulted Parties: | Land Division, Division of Aquatic Resources, Office of Conservation and Coastal Lands, Office of Hawaiian Affairs |
| Declaration: | The Board find that this project will probably have minimal or no significant effect on the environment and declares that this project is exempt from the preparation of an environmental assessment. |

Exhibit A-1

Mobile Food Concession at Ala Wai Small Boat Harbor



Exhibit A-1

Ala Wai Small Boat Harbor

Exhibit A-2



Ala Wai Small Boat Harbor

Exhibit A-3



Ala Wai Small Boat Harbor

Exhibit A-4



Exhibit B

**CONCESSION CONTRACT FOR MOBILE FOOD TRUCK
CONCESSION
AT ALA WAI SMALL BOAT HARBOR
TMK (1) 2-3-037:012 (Portion)
IFB No. LO-23-001**

THIS CONTRACT IS MADE AND ENTERED INTO as of
July 10, 2023, by and between the STATE OF HAWAII, hereinafter called the "STATE," through the BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, and BLUE WATER SHRIMP INTERNATIONAL LLC, a Hawaii limited liability company, hereinafter called the "CONCESSIONAIRE," for the operation of a Mobile Food concession by the CONCESSIONAIRE at the Ala Wai Small Boat Harbor, Oahu, Hawaii, for a period of three (3) years commencing on July 1, 2023 and ending on June 30, 2026.

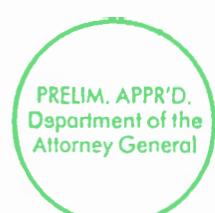
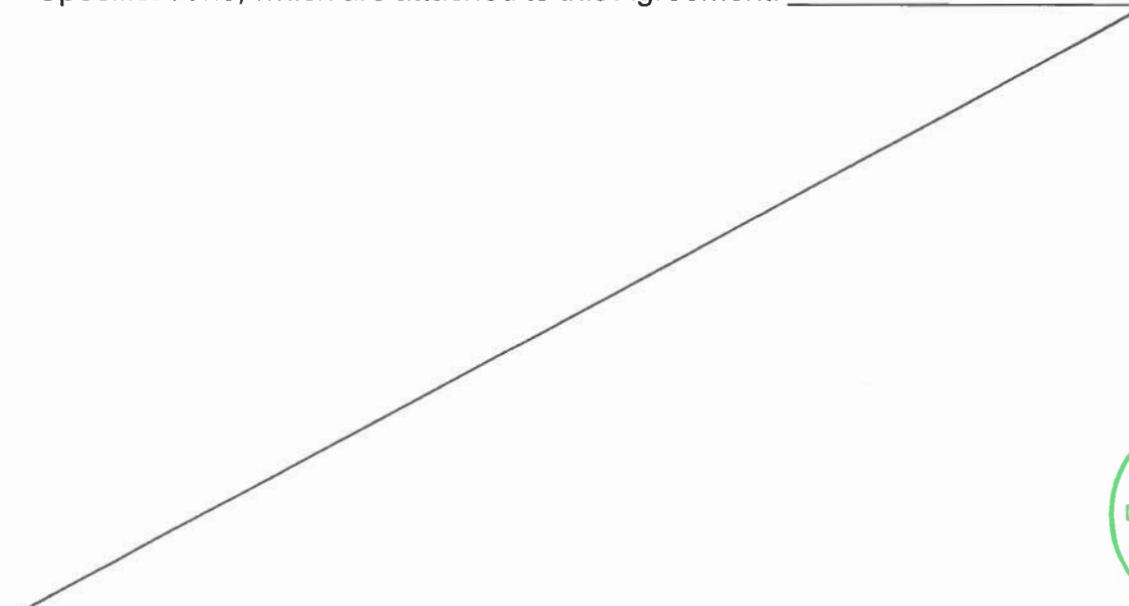
The written Bid Proposal submitted by CONCESSIONAIRE for IFB No. LO-23-001 was accepted by the STATE as the highest and best bid by a responsive and responsible Bidder submitted pursuant to a call for offers made on April 24, 2023, April 25, 2023, and April 26, 2023, in accordance with chapter 102, Hawaii Revised Statutes.

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 Contract, which includes all provisions and representations set forth in the Notice to Bidders, Notice of Intention to Bid Form, Qualifications, Qualification Questionnaire submitted by Concessionaire, Bid Proposal submitted by Concessionaire, Specifications, Exhibits, and any other part of Invitation for Bids ("IFB") Mobile Food Truck Concession Contract for Mobile Food Truck Concession at Ala Wai Small Boat Harbor, Oahu, Hawaii, TMK (1) 2-3-037:012 (Portion), IFB No. LO-23-001, issued by the State of Hawaii, Department of Land and Natural

Resources, and also includes the Special Terms and Conditions attached to this Contract as Exhibit "1", all of which are incorporated by reference herein.

B. Compensation. As compensation to the STATE for the right of the CONCESSIONAIRE to operate a concession in accordance with the Scope of Work described in paragraph A hereinabove, at the Ala Wai Small Boat Harbor, the CONCESSIONAIRE agrees to pay the State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation, during the term of this contract, **FOUR THOUSAND FIVE HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$4,525.00)**, each and every month, from the concessionaire each and every month, in accordance with the Bid Proposal submitted by CONCESSIONAIRE and all other terms, conditions, and provisions of this Contract, or pay **TEN PERCENT (10%)** of the gross receipts, whichever is greater. The Base Rent shall be paid in advance monthly and the percentage rent portion, if any shall be due no later than fifteen (15) calendar days following the end of the billable month and include a Statement of Gross Receipts prepared on a DLNR approved form, which shall be completed by the Concessionaire and shall be provided each and every month from July 1, 2023 to June 30, 2026, in strict accordance with the Bid Proposal submitted by Concessionaire, Specifications, Exhibits, and any addenda to the Specifications, which are attached to this Agreement. _____



PRELIM. APPR'D.
Department of the
Attorney General

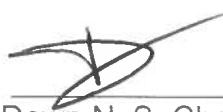
IN WITNESS WHEREOF, the parties have executed this Contract, effective the day and year first above written.

Approved by the
Board of Land and
Natural Resources at
its meeting held on:
December 10, 2021.

APPROVED AS TO FORM:


CINDY Y. YOUNG
Deputy Attorney General

STATE OF HAWAII

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

CONCESSIONAIRE•

BLUE WATER SHRIMP
INTERNATIONAL LLC, a Hawaii
limited liability company

Print Name: 
By: 
Its: Member

Print Name: _____

By: _____

Its: _____

*Evidence of the authority of the CONCESSIONAIRE's representative to sign this contract for the CONCESSIONAIRE must be attached.



ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this 30th day of June, 2023, before me personally appeared Gilbert Salazar and

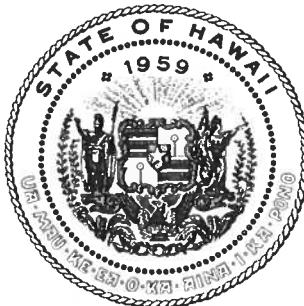
to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



My Commission Expires: May 23, 2022

Doc. Date: 04/30/2018 Pages: 16
Notary Name: John W. Hirsch First Circuit
Doc. Description: Notary Seal

A circular logo with a green border. Inside the border, the words "PRELIM. APPR'D." are written in a bold, black, sans-serif font. Below this, the words "Department of the Attorney General" are written in a smaller, black, sans-serif font.



STATE OF HAWAII

Department of Land and Natural Resources
Division of Boating and Ocean Recreation

Invitation for Bid (IFB) for

Sealed Bid Proposals

CONCESSION CONTRACT FOR MOBILE FOOD TRUCK CONCESSION

at

ALA WAI SMALL BOAT HARBOR
ISLAND OF OAHU, HAWAII
TMK (1) 2-3-037:012 (Portion)

IFB No. LO-23-001

APPROVED BY:

A handwritten signature in black ink, appearing to read "Dawn N. S. Chang".

BN

Chairperson, Board of Land and Natural Resources

Apr 5, 2023

Date

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TIMELINE:

| | |
|---|----------------------------------|
| <u>Publication</u> | <u>April 24, 25 and 26, 2023</u> |
| <u>Notice of Intention to Bid & Qualification Questionnaire Due</u> | <u>May 10, 2023</u> |
| <u>Sealed Bid Proposal Due</u> | <u>June 1, 2023, 4:00 PM</u> |
| <u>Sealed Bid Proposal Opening</u> | <u>June 1, 2023, 4:30 PM</u> |

NOTICE TO BIDDERS

INVITATION FOR BIDS CONCESSION CONTRACT FOR MOBILE FOOD TRUCK CONCESSION AT THE ALA WAI SMALL BOAT HARBOR IFB No. LO-23-001

The State of Hawaii, Department of Land and Natural Resources (DLNR), Division of Boating and Ocean Recreation (DOBOR) is issuing an Invitation for Bids ("IFB") to qualified parties interested in a Mobile Food Truck Concession Contract to operate a Mobile Food Truck Concession pursuant to Chapter 102, Hawaii Revised Statutes (HRS), on state-owned lands within the Ala Wai Small Boat Harbor situated in Honolulu, Oahu, Hawaii, Tax Map Key no. (1) 2-3-037:012 (Portion) as shown on the site map, as shown in Exhibits "A-1" and "A-2," containing a total area of approximately 300 square feet of land, identified as Stall AWMC-1, on file with DOBOR. Any party that may be interested in providing a bid may inspect the concession premises by calling DOBOR at (808) 587-1964 Monday through Friday, 8:00 AM to 4:00 PM except federal and State Holidays.

The successful bidder shall have the right to use and occupy the site for operation of a Mobile Food Truck 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 only such sundry items as approved in writing by DOBOR. The Specifications, General Instructions to Bidders, Qualification Questionnaire, Intention and Proposal Forms shall be provided in the Bid Packet.

Before any prospective bidder shall be entitled to submit a Bid, 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 4:00 PM on May 10, 2023, to the office of DLNR, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii 96819 ("DOBOR office").

Unless otherwise specified, the IFB, including required forms for bidding, qualifications, specifications, and contract, may be obtained from DOBOR during the regular hours of 8:00 AM to 4:00 PM from Monday through Friday. Requests for the IFB documents may also be made to Richard Howard, Property Manager, at phone no. (808) 587-1964 or email to richard.t.howard@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 on that they may prepare and submit a sealed bid.

A disqualified bidder may appeal the disqualification by submitting a written appeal within seven (7) calendar days of notification by DLNR. The appeal shall state the reasons bidder believes disqualification to be improper, and may only reference documentary evidence submitted to DLNR as of the due date of the Qualification Questionnaire. No new evidence will be allowed 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, whose decision in any such appeal shall be final.

BID PROPOSALS FROM QUALIFIED BIDDERS

Due Diligence. Bidders are responsible for acquainting themselves with all bid and contract documents and to make all necessary investigations and examinations of the physical location and characteristics of mobile food concession premises at the Ala Wai Small Boat Harbor, especially to familiarize themselves before submitting a bid. Failure to do so will not be grounds for any claim that the bidder did not understand the concession bid conditions and will not act to relieve any condition of the contract or proposal documents. The submission of a bid shall be considered conclusive evidence that the bidder has made such investigations and examinations.

Bidder's Questions. The DOBOR Property Manager shall be the contact for any communications. Should a bidder find discrepancies or ambiguities in, or omissions from the bid documents, or be in doubt as to their meaning, the bidder shall submit a timely written request for interpretation or correction to the DOBOR Property Manager. Any interpretation or correction to the bid documents will be made only by written addendum to all known bidders which received a set of bid documents and submitted a timely Notice of Intention to Bid. While verbal requests for clarification may be requested, any such verbal responses shall only be intended as informal general directions and not intended as an official position of DOBOR. The State will not be responsible for any oral statements or representations. Only timely submitted written questions may generate an official response solely at DLNR's discretion. Questions or communications regarding the IFB may be sent to the DOBOR Offices c/o the DOBOR Property Manager, phone number (808) 587-1964 or emailed to richard.t.howard@hawaii.gov. Do not email or fax official forms or bids.

A sealed bid 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 Sealed Bid Proposals section of this offering. The bid deposit must be in the indicated form 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.

Sealed bids are due on or before 4:00 PM on June 1, 2023, to the above DOBOR office at 4 Sand Island Access Road, Honolulu, HI 96819. All sealed bids received will be time-marked and held at DOBOR until the hour of bid opening. Any mailed bids must arrive at the DOBOR Offices before the deadline and are the sole responsibility of the bidder. Any bids received after the hour of opening will be returned unopened to the sender. Sealed bids in a sealed envelope shall be clearly labeled as such. Faxed or emailed bids will not be accepted.

Sealed bids timely and properly received will be publicly opened at the DOBOR offices at 4:30 PM on June 1, 2023. In case of a tie of high bids, DLNR may reject all bids or may award the concession contract to the tied bidder who is best qualified by experience and financial means, as determined by the Chairperson.

Inquiry for the IFB and for any persons requiring a special accommodation (e.g., large print materials) are asked to please contact DOBOR Property Management at telephone number (808) 587-1964 and may email DOBOR at richard.t.howard@hawaii.gov.

DLNR reserves the right to amend, modify, or cancel this Invitation for Sealed Bids, re-advertise 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 it is in the best interest of the State or DLNR. DLNR also reserves the right to amend or supplement requirements and materials, in writing, at any time prior to the sealed bid submission deadline. The Chairperson of DLNR may cancel the Solicitation at any time, including after bids have been opened, and the Chairperson may reconsider any decision made in connection with this Request for Sealed Bids, including any decision to cancel the Solicitation; provided that the Chairperson determines that is in the best interest of the State.

A handwritten signature in black ink, appearing to read "Dawn N. S. Chang", is written over a horizontal line.

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

Publication Dates: Honolulu Star-Advertiser April 24, 2023, April 25, 2023, and April 26, 2023
DEPARTMENT OF LAND AND NATURAL RESOURCES, Posting Date: April 24, 2023.

NOTICE OF INTENTION TO BID

**for Concession Contract to Allow Operation of a Mobile Food Truck Concession
Located at the Ala Wai Small Boat Harbor, Island of Oahu, Hawaii
IFB No. LO-23-001**

DATE: _____

Department of Land and Natural Resources
Division of Boating and Ocean Recreation
4 Sand Island Access Road
Honolulu, Hawaii 96819
Email: richard.t.howard@hawaii.gov
Fax: (808) 587-1977

The undersigned intends to bid for the Concession Contract, for Operation of a Mobile Food Truck Concession at the Ala Wai Small Boat Harbor, on the Island of Oahu, Hawaii.

Attached is the fully completed Qualification Questionnaire as required.

Respectfully submitted,

Name of Bidder
(Legal name of entity if applicable)

Authorized Signature

Printed Name and Capacity

QUALIFICATIONS

1. QUALIFICATION OF BIDDERS:

- 1.1. Prospective bidders must be capable of carrying out the terms and conditions of the concession contract that may be awarded, for which bids are being called.
- 1.2. Each prospective bidder must complete and file a written Notice of Intention to Bid form and Qualification Questionnaire at DLNR, Division of Boating and Ocean Recreation ("DOBOR"), 4 Sand Island Access Road, Honolulu, Hawaii 96819, no later than 4:00 PM (Hawaii Standard Time) on Wednesday, May 10, 2023, or will be considered sufficient cause to disqualify a prospective bidder from submitting a bid. Emailed or faxed documents will not be accepted.
- 1.3. The Qualification Questionnaire in paragraph 2 hereinbelow, properly executed and notarized, shall be reviewed by DLNR to determine whether the prospective bidder's experience, competence, and financial standing meet the minimum qualifications set herein:
 - 1.3.1. Bidder must have at least two (2) years full-time experience in Hawaii owning and/or operating a mobile food concession, restaurant, food concession, food catering business, or related business;
 - 1.3.2. Sufficient annual gross income indicating a successful business during the two (2) immediately preceding fiscal years;
 - 1.3.3. Bidder must have sufficient liquid working capital or a firm written commitment from a financial institution for a sufficient loan;
 - 1.3.4. Has in its possession or is able to acquire, prior to the concession agreement commencement, a mobile food concession vehicle approved by appropriate State and County agencies to be used in operation of a Mobile Food Truck Concession.
- 1.4. If after review of the Qualification Questionnaire, DLNR has not found the prospective bidder fully qualified and able to carry out the terms and conditions of the concession contract, the prospective bidder may request a written appeal within seven (7) calendar days from the mailing date or actual notice of DLNR's determination. Any appeal shall state the reason(s) the finding is believed improper and shall be based only on the timely previously-submitted documentary evidence. No new evidence will be allowed 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 shall be final.
- 1.5. All information contained in the Qualification Questionnaire shall remain confidential to the extent allowed under the law including chapter 102 and chapter 92F, Hawaii Revised Statutes ("HRS") and other applicable laws, and Qualification Questionnaires of all bidders shall otherwise be returned after having served their purpose.
- 1.6. Failure to complete the Qualification Questionnaire, or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.

QUALIFICATION QUESTIONNAIRE

2. QUALIFICATIONS:

Only qualified bidders, as determined by DLNR-DOBOR, pursuant to section 102-3, HRS, may bid on the concession. In order to be considered, the entire Qualification Questionnaire must be completed.

Having been first duly sworn and deposed, the undersigned states that the bidder has the minimum qualifications required under this Invitation for Bid ("IFB") and according to the Specifications on page 23 hereof, and that the undersigned is furnishing the attached information as proof of its qualifications. All bidders shall submit this Qualification Questionnaire and all the required evidence. Bidders that do not submit a Qualification Questionnaire and the required documentation shall be disqualified from bidding. The named bidder has submitted the Notice of Intention to Bid for the Concession Contract to allow operation of a Mobile Food Truck Concession at Ala Wai Small Boat Harbor, Oahu, Hawaii:

2.1. Name of Bidder: _____

2.2. Business Organization: Individual Partnership Corporation Other
(if "Other" - Describe type: _____)

2.3. Principal Office Address: _____

2.4. State General Excise Tax ("GET") Number: _____

2.4.1. If exempt from GET, cite applicable statute:

2.5. Federal Employee I.D. Number: _____

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

2.6. If a corporation, please answer the following: Profit Nonprofit

When incorporated and where: _____

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

Name of Officers:

President: _____

Vice President: _____

Secretary: _____

Treasurer: _____

Others: _____

Principal Stockholders:

| | <u>Name and Address</u> | <u>% of Stock held</u> |
|-----|-------------------------|------------------------|
| (1) | _____ | _____ |
| (2) | _____ | _____ |
| (3) | _____ | _____ |
| (4) | _____ | _____ |

2.7. 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) | _____ | _____ |

2.8. 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):

2.9. Provide a description and evidence of a minimum two (2) years of experience of the Bidder in the ownership and/or operation of a mobile food concession, restaurant, food concession, food catering business, operations, or related business similar to that described in this IFB, including the number of years of experience, business name, business address, and dates of operation as well as a recent (within the past month) photograph of the vehicle to be used.

2.10. If related or other form of business, please answer the following (attach copy if necessary):

What type of business: _____

Where and when formed: _____

When registered in State of Hawaii: _____

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

2.11. Provide evidence of the bidder's ability to procure mobile food equipment that will meet the minimum requirements of this IFB. Attach any information sheet showing but not limited to design and specifications and costs, and bidder's financial means of procuring the equipment.

2.12. Has the applicant ever defaulted or been terminated on a State of Hawaii contract/agreement or defaulted on real property taxes? If yes, give details on a separate sheet.

Yes No

2.13. Has any mobile food concession agreement, contract, or other agreement for the operation of any mobile food concession or similar business owned and/or operated by the bidder ever been cancelled? If yes, give details on a separate sheet.

Yes No

2.14. Has the bidder ever been fined or been the subject of any enforcement or legal action for

any violation of city, county, federal and/or State of Hawaii law during the previous two years? If yes, give details on a separate sheet.

Yes No

- 2.15. Provide satisfactory evidence to support the financial ability of the bidder to operate and maintain a mobile food concession. Minimum requirements must include income and expense statements, balance sheets, and federal tax returns, from the past two fiscal years.
- 2.16. Provide at least two (2) outside references whom the DOBOR may contact to confirm the bidder's qualifications to operate a mobile food truck. Provide names, contact information, and the relationship or experience with each reference.
- 2.17. Bidder must obtain all insurance policies required in the specifications section of this IFB as a prerequisite of the issuance of the concession contract.
- 2.18. Attach copy of state and federal tax clearances.
- 2.19. Attach evidence of sufficient annual gross income indicating a successful business during the two (2) immediately preceding fiscal years.
- 2.20. Attach sufficient proof of liquid working capital or a firm written commitment from a financial institution for a sufficient loan.
- 2.21. The bidder hereby consents to and authorizes the DOBOR to confirm all or any of the foregoing information with any financial institution or any other source necessary.
- 2.22. 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 a State permit and a certified kitchen (attach copy).

Bidder will obtain all insurance policies required in the specifications section of this bid as a prerequisite of the final issuance of the concession agreement.

- 2.23. Attach a list of principal items to be on proposed menu, including cost of each item to be approved by the DOBOR, as well as any sundry items to be sold secondary to the food.
- 2.24. Attach a list of days and hours of intended operations each week.
- 2.25. Does the Bidder have now in its possession a fully quipped mobile vending concessions?

Yes, License plate number of mobile food concession and attach picture.

No, 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.

- 2.26. Bidder must obtain all insurance policies required in the "Specifications" section of this bid as a prerequisite of the final issuance of the concession agreement.

Insurance Coverage:

Bidder's Business Address: _____

Telephone No. and Email: _____

Contact Person: _____

Insurance coverage is carried by:

| <u>Carrier</u> | <u>Policy No.</u> | <u>Agent</u> | <u>Limits</u> |
|----------------|-------------------|--------------|---------------|
|----------------|-------------------|--------------|---------------|

Commercial General

Liability: _____

Automotive

Liability: _____

Workers

Compensation: _____

Temporary

Disability: _____

Prepaid Health

Care: _____

Unemployment

Insurance: _____

2.27. 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 knowledge and belief.

Dated this _____ day of _____, 2023,

at _____

Name of Bidder

Authorized Signature

Print Name

Title

SIGNATURE MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

TENTATIVE SCHEDULE

The tentative schedule of related activities for this IFB are as follows:

| | |
|--|--|
| Publication | April 24, 2023, April 25, 2023, and April 26, 2023 |
| Notice of Intention to Bid and Qualification Questionnaire Due | May 10, 2023 |
| Qualified bidders will be notified by DLNR | May 22, 2023 |
| Bid Proposal Due and Opening of Bids | June 1, 2023 |
| Estimated start of concession contract | July 1, 2023 |

SEALED BID PROPOSAL

**CONCESSION CONTRACT FOR
MOBILE FOOD TRUCK CONCESSION
AT THE ALA WAI SMALL BOAT HARBOR, OAHU, HAWAII ("Bid Proposal")
TMK (1) 2-3-037:012 (Portion)
IFB No. LO-23-001**

The undersigned bidder declares that it has carefully examined the attached Specifications, Exhibits, and Concession Contract, as well as the entire IFB for a Mobile Food Truck Concession Contract for a Mobile Food Truck Concession at the above location, and hereby makes application for the Mobile Food Truck Concession Contract as described herein.

The undersigned bidder understands that this concession is at a public facility; therefore, the rates established for the sale of food 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 is calculated and comprised of a Base Rental Amount or ten percent (10%) of gross receipts whichever is greater. The Gross Percentage shall remain the same throughout the term of the Contract. The Base Rent shall be paid monthly, in advance, and the Gross Percentage Rent portion, if any, shall be due no later than fifteen (15) calendar days following the end of the billable month with a gross receipts report prepared on a DLNR approved form. The bidder shall provide a bid for the Base Rental portion only. Only bids for the highest Base Rental portion will be considered.

The undersigned bidder understands that the duration of the concession agreement shall be for Thirty-Six (36) Months.

The undersigned bidder agrees that, if awarded the Mobile Food Truck Concession Contract, it will enter into a Mobile Food Truck Concession Contract with the Department of Land and Natural Resources, State of Hawaii ("DLNR") in accordance with the terms and conditions set forth in IFB No. LO-23-001 and this Bid Proposal, and any addenda to the Specifications issued by DLNR, appended to this Bid Proposal.

In accordance with section 102-6, HRS, all bids 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 the National Credit Union

Administration, payable at site to "DOBOR, Department of Land and Natural Resources," or by a surety bond in the name of the officer calling for bids issued in accordance with section 102-6(b), HRS. The bid deposit shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount 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 amount bid is determined by multiplying the minimum monthly Mobile Food Truck Concession Contract fee payment offered x 12 (months). The bid deposit for bids of \$50,000 or less is determined by multiplying the monthly concession fee bid x 36 (months) x 5%.

The undersigned bidder submits:

Surety Bond Cashier's Check Other, as allowed under section 102-6, HRS

Certified Check Legal Tender

for its bid deposit in the amount of _____ Dollars
(\$_____) as required and made payable to "DOBOR, Department of Land and Natural Resources." An insufficient bid deposit amount may lead to disqualification of bidder.

- A. The Mobile Food Truck Concession Contract fee to be paid to the DLNR each month shall be the minimum monthly payment.
- B. Minimum Monthly Fee. The Concessionaire shall pay to DLNR on a monthly basis in advance, without notice or demand, the minimum monthly fee, 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 concession contract.
- C. Payment. All payments due to DLNR shall be made payable to the Division of Boating and Ocean Recreation, Department of Land and Natural Resources ("DOBOR"), located at 4 Sand Island Access Road, Honolulu, Hawaii 96819, in a form acceptable to DOBOR. Failure to make payment when due shall constitute a breach of the Mobile Food Truck Concession Contract and shall be grounds for termination of the contract by DLNR.

- Bids shall apply and be accepted only for the Monthly Base Rent Portion of the concession fee.
- Bids for Base Rent shall be not less than THREE THOUSAND DOLLARS (\$3,000) per month.
- A Bid Deposit must be provided with their Sealed Bid as formulated in the Specifications.

The Base Rent Payment is to be made in advance monthly. The duration of the concession agreement shall be for Thirty-Six (36) months, beginning July 1, 2023, and ending June 30, 2026. Operations may commence upon final execution of the Contract Agreement; and receipt of the first month's base rent; and receipt of the performance bond or equivalent; and receipt of the required certificate of insurance.

The undersigned bidder bids a Base Rent Monthly Concession Fee of:

Dollars {\$_____} per MONTH.

Note: This cannot be lower than THREE THOUSAND DOLLARS (\$3,000) per month and the Base Rent Monthly Concession Fee will be the greater of the Base Rent Monthly Concession Fee or 10 percent (10%) of gross receipts, whichever is greater.

It is understood and agreed that DLNR has the right to cancel this Invitation for Bids, to the extend process; to accept or reject any or all bids, and to waive any defects, if such extension, acceptance, rejection, or waiver is deemed to be in the best interest of the State of Hawaii.

Respectfully submitted,

Name/Entity of Bidder

By: _____
Authorized Signature

Print Name of Person Signing

Title: _____

SIGNATURE MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

Person to contact if awarded contract: _____

Address of Bidder: _____

Telephone: _____

Email: _____

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

(if exempt from GET, cite applicable statute: _____)

Federal Employer Identification Number: _____

(if exempt from federal taxes, attach documentation of such exemption)

Type of Organization: Individual; Partnership; Corporation; Other

(specify type of entity if "Other": _____)

State of Incorporation or other legal establishment: _____

Is entity registered to do business in the State of Hawaii? Yes No

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

Dated this _____ day of _____, 2023, at _____.

Respectfully submitted,

_____ Name/Entity of Bidder

By: _____
Authorized Signature

_____ Print Name of Person Signing

Title: _____

SIGNATURE MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

FOR OFFICE USE ONLY:

Accepted by: _____
Department of Land and Natural Resources

Print Name: _____ Date: _____

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

GENERAL INSTRUCTIONS TO BIDDERS
IFB No. LO-23-001

1. NOTICE OF INTENTION TO BID AND QUALIFICATION QUESTIONNAIRE:

- 1.1. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii 96819, no later than 4:00 P.M. (Hawaii Standard Time) May 10, 2023. Emailed and Faxed documents will not be accepted.
- 1.2. The Qualification Questionnaire, properly executed and notarized, shall be reviewed by the Department of Land and Natural Resources ("DLNR") to determine whether the prospective Bidder's experience, competence and financial standing meet the minimum qualifications set forth in the Qualification Questionnaire.
- 1.3. Failure to complete the Qualification Questionnaire or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.
- 1.4. 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 given an opportunity to be heard by DLNR. If upon review of the Qualification Questionnaire, the prospective Bidder appears to be not fully qualified and unable to carry out the terms and conditions of the Agreement that may be awarded; DLNR shall afford the prospective Bidder an opportunity to be heard and may allow appeal of disqualification. Any such appeal shall be in writing and received by the Department of Land and Natural Resources, Division of Boating and Ocean Recreation, 4 Sand Island Access Road, Honolulu, Hawaii, 96819 within seven (7) calendar days from the day DLNR provided mailed notice of disqualification to the Bidder. The Bidder shall state reasons why they believe the rejection was improper and refer to evidence in the documents provided to DLNR in its possession. The Bidders shall refer to evidence within these documents to support such reasons. The Chairperson's decision in any appeal shall be final.

2. BID PROPOSALS

- 2.1. Sealed bids will be received by 4:00 PM and publicly opened at 4:30 PM, June 1, 2023, at DLNR, Division of Boating and Ocean Recreation ("DOBOR") office located at 4 Sand Island Access Road, Honolulu, Hawaii 96819. Only those that have submitted the required Notice of Intention to Bid, with the completed Qualification form and having been qualified by DLNR, shall be able to bid.

- 2.2. All Sealed Bids (Bids) shall be greater than THREE THOUSAND DOLLARS (\$3,000) and shall apply only to the Base Rental monthly rental portion. All sealed bids received will be time-marked and held at the DOBOR until the hour of bid opening. Bids that are mailed in must arrive at the DOBOR before the time of opening; bids received after the hour of opening will be returned unopened to the sender. Sealed Bids in a sealed envelope shall be clearly labeled. Faxed or Emailed bids will Not be accepted.
- 2.3. Bid Deposit Accompanying Bid. In accordance with §102-6, HRS, all bids 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, payable at sight to the Department of Land and Natural Resources, or by a surety bond issued in accordance with §102-6(b), HRS.

The Bid Deposit shall be in a sum not less than five percent (5%) of the amount bid; provided that when the amount 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 fee bid x 36 months x five percent (5%). The return of deposits shall be handled in accordance with §102-7, HRS.

- 2.4. Award of a concession agreement shall be made to the qualified bidder submitting the highest bid for the fixed Monthly Base Rent, which must be at or above the upset amount of \$3,000. No consideration will be given to "percentage of gross receipts portion" as the percentage shall remain the same. If there is a tie in the highest minimum monthly fee offered, DLNR may reject all Bids or may award the concession contract to the tied Bidder who is best qualified by experience and financial means, as determined by the Chairperson.
- 2.5. Bidder is responsible for acquainting themselves with all documents related to this Concession and to make all necessary investigations and examinations of the small boat Harbor, especially the concession area. Bidder shall be responsible for acquainting themselves with the physical location and characteristics of the concession premises and shall judge for themselves all of the circumstances affecting their offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the conditions of the proposal and will not act to relieve any condition of the agreement or proposal documents. The submission of a bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.

3. BIDDERS QUESTIONS:

- 3.1. For the purpose of the communication, the Division of Boating and Ocean Recreation's Property Manager is to be the contact. Contact may be made at the Division of Boating and Ocean Recreation, Property Management Branch at 4 Sand Island Access Road, Honolulu, HI 96819; Tel: (808) 587-1964 or Email: richard.t.howard@hawai.gov. Should a Bidder find discrepancies or ambiguities in, or omissions from the bidding documents, or be in doubt as to their meaning, the Bidder shall submit a written request for interpretation or correction to the Department of Land and Natural Resources, Division of Boating and Ocean Recreation in a timely manner. Any interpretation or correction of the bidding documents will be made only by written addendum to all Bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations. An email address for communication of the IFB purposes shall be richard.t.howard@hawaii.gov and contact phone number shall be (808) 587-1964.

SPECIFICATIONS
For Operation of a Mobile Food Truck Concession Located at the
Ala Wai Small Boat Harbor, Oahu, Hawaii

1. DEFINITIONS AND INTERPRETATIONS:

- 1.1. "Agreement" means the written contract between the Department of Land Natural Resources and the Concessionaire to operate the mobile food concession.
- 1.2. "Bid" or "Bids" means a sealed bid.
- 1.3. "Bidder" or "Bidders" means a qualified, responsive, and responsible bidder.
- 1.4. "BLNR" means the Board of Land and Natural Resources.
- 1.5. "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the Department of Land and Natural Resources.
- 1.6. "Concessionaire" means the successful bidder entering into the Mobile Food Truck Concession Contract at Ala Wai Small Boat Harbor, parking lot, Stall AWMC-1 Department of Land and Natural Resources, State of Hawaii. The term shall also include the successful bidder's agents, successors or assigns, managers, employees, and legal representatives where the context so admits or requires.
- 1.7. "County" means the City and County of Honolulu.
- 1.8. "DLNR" means the Department of Land and Natural Resources.
- 1.9. "DOBOR" means the Division of Boating and Ocean Recreation.
- 1.10. "Mobile Food Truck Concession Area" means the areas within the Ala Wai Small Boat Harbor that are included within the Mobile Food Truck Concession Contract.
- 1.11. "Mobile Food Truck Concession Contract" means the contract, instrument, or agreement which grants a person or entity the privilege of operating a Mobile Food Truck Concession at the designated area of the Ala Wai Small Boat Harbor, Oahu, Hawaii, identified in Exhibit "A-1" and Exhibit "A-2".
- 1.12. "HAR" means Hawaii Administrative Rules.
- 1.13. "HRS" means Hawaii Revised Statutes.
- 1.14. "IFB" (or invitation for bids) and "Solicitation" are synonymous and refer to IFB No. LO-23-001.
- 1.15. "AWSBH" means Ala Wai Small Boat Harbor.
- 1.16. "State" means the State of Hawaii.

2. MINIMUM QUALIFICATIONS:

- 2.1 Prospective Bidders must be capable of carrying out the terms and conditions of the Agreement that may be awarded, for which bids are being called.
- 2.2. Each prospective Bidder must file a written Notice of Intention to Bid and the completed Qualification Questionnaire at DOBOR, 4 Sand Island Access Road, Honolulu, Hawaii 96819, no later than 4:00 PM (Hawaii Standard Time) on May 10, 2023. Faxed and E-mail documents will not be accepted.
- 2.3. The Qualification Questionnaire, properly executed and notarized, shall be reviewed by DLNR to determine whether the prospective Bidder's experience, competence and financial standing meet the following minimum qualifications:
 - 2.3.1 Two (2) years full-time experience in Hawaii owning and/or operating a mobile food concession, restaurant, food concession, food catering business, or related business.
 - 2.3.2 Show sufficient annual gross income indicating a successful business during the two (2) immediately preceding fiscal years.
 - 2.3.3 Show proof of sufficient liquid working capital, and specify amount and/or show in writing a firm commitment from a financial institution for a sufficient loan which clearly specifies the loan amount qualified for.
 - 2.3.4 Has in its possession or is able to acquire, prior to Agreement commencement, a mobile food concession vehicle approved by appropriate State and County agencies to be used in operation of a Mobile Food Truck Concession at the site, under the Agreement.
- 2.4. If upon review of the Qualification Questionnaire, the prospective Bidder appears not fully qualified and able to carry out the terms and conditions of the Agreement that may be awarded; the State shall afford the prospective Bidder an opportunity to be heard.
- 2.5. Failure to complete the Qualification Questionnaire or submit the Qualification Questionnaire and the written Notice of Intention to Bid, within the prescribed time, is sufficient cause to disqualify a prospective Bidder from submitting an offer.
- 2.6. All information contained in the Qualification Questionnaire shall remain confidential, and Qualification Questionnaires of all Bidders shall be returned after having served their purpose.

3. SCOPE OF MOBILE FOOD TRUCK CONCESSION CONTRACT:

The term of the Mobile Food Truck Concession Contract shall be for a period of three (3) years commencing July 1, 2023, through June 30, 2026. In addition to any provisions for early termination, BLNR with approval of the Chairperson, may terminate the Mobile Food Truck Concession Contract without cause and in the best interest of the State by providing sixty (60) days prior written notice to the Concessionaire.

- 3.1. DLNR reserves the right in the best interest of the State and in its sole and absolute discretion to interrupt or cancel the Mobile Food Truck Concession Contract. The Concessionaire shall bear all expenses or losses in full, and shall not take or allow to be taken any action for damages, or recourse against the State of Hawaii.
- 3.2. Should DLNR determine that a natural disaster or civil defense emergency make it necessary to terminate the Agreement, the Agreement will terminate without any liability to the State.
- 3.3. The Concessionaire's sale of food and non-alcoholic beverages shall be restricted to the hours between 9:00 AM and 7:00 PM, unless a change in hours is authorized in writing by DOBOR. Concessionaire must at minimum operate six (6) days per week, five (5) hours minimum per day from 10:00 AM to 3:00 PM, which shall include weekends (Saturdays and Sundays) and all federal and State of Hawaii holidays so that the needs of Ala Wai Boat Harbor patrons will be adequately served.
- 3.4. The Concessionaire shall keep on file with DOBOR a schedule of business hours and days open, a menu of the items available for sale and the prices charged subject to approval by the DOBOR.
- 3.5. The Mobile Food Truck Concession Area of stall AWMC-1 to be included under the Mobile Food Truck Concession Contract is shown on the exhibit in this Solicitation labeled as Exhibits "A-1" and "A-2" and hereinafter referred to as "Mobile Food Truck Concession Area." DOBOR reserves the right to relocate or reconfigure the Mobile Food concession area or portions thereof during the term of the Mobile Food Truck Concession Contract at DLNR's discretion and in the best interest of the State; provided that such relocation shall not be unreasonable and shall be subject to the approval of the Chairperson and BLNR
- 3.6. Concessionaire must provide food via a mobile food truck subject to Concessionaire's compliance with Chapter 343, HRS, and all applicable laws.
- 3.7. The concessionaire must provide a completely self-contained mobile food vehicle. No permanent or temporary utility lines or external generator may be installed, unless authorized in writing, in advance, by DOBOR.

- 3.8. DOBOR may reserve portions of the Mobile Food Truck Concession Area for special events with advance written notice to the Concessionaire or may utilize portions of the Mobile Food Truck Concession Area for emergency purposes.
- 3.9. Only properly registered mobile food trucks shall be allowed on the Mobile Food Truck Concession Area. No parking of Concessionaire's other vehicles, camping, or uses of the Mobile Food Truck Concession Area other than for food service shall be permitted.
- 3.10. DOBOR reserves the right to move and reconfigure the Mobile Food Truck Concession Area.

4. BIDDING PROCESS AND MOBILE FOOD TRUCK CONCESSION CONTRACT AWARD:

- 4.1. All Bids shall be made on the bid form provided and shall include their business address and telephone number, be properly signed by the Bidder and notarized by the Bidder. Faxed or emailed bids will not be accepted. Bids not complying with the IFB shall be rejected, except as may be otherwise provided in these specifications.
- 4.2. The Mobile Food Truck Concession Contract shall be awarded to the responsible Bidder submitting the highest and best monthly base rent Bid as provided herein.
- 4.3. DLNR reserves the right to reject any or all Bid(s) in the best interest of the State, as determined by the Chairperson.
- 4.4. DLNR reserves the right to waive or accept any minor defect or deviation from specifications in a Bid if the Chairperson determines that such waiver or acceptance will be in the best interest of the State and shall not affect in any way the standards of performance, operations, capacities, or quality of service offered.
- 4.5. The Bid must offer a minimum monthly concession fee of at least three thousand U.S. dollars (\$3,000.00).
- 4.6. All Bids received will be time-marked upon receipt and held at DLNR until the hour of bid opening. Bids that are mailed are at the sole risk and responsibility of the Bidder and must arrive at DLNR's DOBOR Offices before the time of opening. Bids received after the specified time of the opening will be returned unopened to the sender. At the time of opening, the Chairperson or the Chairperson's designee shall open all Bids.
- 4.7. The Mobile Food Truck Concession Contract concession fee shall be the amount of the Bid offered by the successful Bidder. The concession fee to be paid to DLNR each month for the term of the concession contract shall be the minimum monthly payment. The award of the Mobile Food Truck Concession Contract shall be made to the responsible Bidder with the highest minimum monthly fee. If there is a tie in the highest minimum monthly fee offered, DLNR may reject all Bids or may award the concession contract to the tied Bidder who is best qualified by experience and financial means, as determined by the Chairperson.

- 4.8. All potential Bidders are cautioned to perform due diligence and to thoroughly investigate all aspects and risks involved with the operation of the mobile food concession being bid upon. All potential Bidders are further cautioned to perform due diligence and to thoroughly investigate availability and cost of liability insurance and other required certificates of insurance policy(ies) prior to submitting a Bid.
- 4.9. No action or proceeding involving this IFB shall be commenced by either party except in the First Circuit, State of Hawaii.
- 4.10. Any Mobile Food Truck Concession Contract entered into as a result of this IFB shall be signed by a person authorized to sign and shall be duly notarized. Additionally, if the Bidder is a business entity, a corporate resolution or other documentary proof acceptable to DLNR showing the authority of that person to enter into contracts and bind the business on behalf of the business entity shall be provided by the Concessionaire with its executed Mobile Food Truck Concession Contract and performance bond.
- 4.11. All Bidders should familiarize themselves with all applicable laws, including HRS Chapters 102.
- 4.12. Bids not accompanied by a proper bid deposit or bid bond and/or surety bond will be rejected and the winning Bidder who fails to enter into the concession contract, or fails to provide performance bonds and/or surety bonds, or provide certificates of insurance or other concession contract completion requirements, within TEN (10) days after the award or within any further time as DLNR may allow, will forfeit the bid bond. NO EXCEPTIONS.
- 4.13. If a single purpose, or newly formed LLC with no assets submits a bid, DOBOR will require a personal guarantee, see Exhibit "B", attached hereto and made a part hereof.

4.A. SUBMISSION OF BIDS:

- 4.A.1. Bids submitted on other than the official bid proposal or which modifies, adds, or deletes any term, consideration, or condition other than those contemplated by the bid documents shall be rejected. Bids showing graduated Mobile Food Truck Concession Contract fee payments shall also be rejected. Bids shall be time-marked and stored in a secure place until the time and date set for bid opening.
- 4.A.2. Corrections of errors by Bidders shall be properly initialed prior to submission.
- 4.A.3. A Bidder may not submit more than one bid. If a Bidder submits more than one bid, all bids submitted by the bidder shall be rejected. For the purposes herein, Bidders considered to be submitting more than one bid shall include but not be limited to the following:

- 4.A.3.1. An individual submitting more than one bid whether in their own name or through an agent;
- 4.A.3.2. An individual submitting a bid who also owns directly or indirectly more than a 25% interest in a legal entity which has also submitted a bid;
- 4.A.3.3. A joint venture partnership or corporation submitting a bid where a person owning directly or indirectly more than a 25% interest in such joint venture partnership or corporation has also submitted a bid; or,
- 4.A.3.4. A legal entity submitting a bid where a person owning directly or indirectly more than 25% interest in such legal entity also owns more than a 25% interest in another legal entity which has submitted a bid.

4.A.4. No Bidder may withdraw its bid after the hour set for the opening thereof or before award of the Contract unless said award is delayed for a period exceeding thirty (30) days from the bid opening.

4.B. DISQUALIFICATION OF BIDDERS:

- 4.B.1. Any one or more of the following causes will be considered sufficient for the disqualification of a Bidder or the rejection of a Bidder's offer:
 - 4.B.1.1. Lack of adequate financial ability, ability to provide equipment, and/or sufficient experience to perform the work, as evaluated by DLNR based on the Qualification Questionnaire.
 - 4.B.1.2. Evidence of collusion among Bidders;
 - 4.B.1.3. Being in arrears in the payment of taxes or other obligations owing the United States government, the State of Hawaii, or the county government, or having defaulted on a previous mobile food concession contract;
 - 4.B.1.4. Receipt of more than one bid from an individual, firm, partnership, corporation, or other legal entity are prohibited in this Solicitation;
 - 4.B.1.5. Delivery of Bids after the deadline specified for bid opening;
 - 4.B.1.6. If the Bid shows any erasures without initials, or additions to, modifications of, or deletions of, any term, consideration,

or condition provided in any of the Solicitation documents;

- 4.B.1.7. If the Bid shows irregularities or defects of any kind;
- 4.B.1.8. If the Bid is conditional or incomplete;
- 4.B.1.9. If any of the required forms are unsigned or unnotarized by the Bidder;
- 4.B.1.10. If the Bidder or surety fails to properly sign the surety bond submitted as bid guaranty;
- 4.B.1.11. If the bid guaranty is received separately from the Bid and is not identifiable as guaranty for a specific offer or is received after the date and time set for the opening of Bids; or
- 4.B.1.12. If the Bidder fails to use the Surety Bid Bond form furnished by DLNR or identical wording contained in the said form when submitting a surety bond as bid guaranty.

4.C. BID DEPOSIT, GENERAL EXCISE TAX, AND EFFECTIVE PERIOD OF BID OFFER:

4.C.1. Bid Deposit Accompanying Bid. In accordance with section 102-6, HRS, all bids 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, payable at sight or unconditionally assigned to the Department of Land and Natural Resources or by the surety bond attached. The bid deposit shall be in the sum not less than five per cent (5%) of the amount bid; provided that when the amount bid exceeds \$50,000, the bid deposit shall be in a sum not less than \$2,500 plus two per cent (2%) of the amount in excess of \$50,000.

4.C.2. Work to be performed under this Solicitation is a business activity taxable under Chapter 237, HRS, and Bidders are advised that they are liable for the Hawaii General Excise Tax (GET). If, however, a Bidder is a person exempt from paying the GET and, therefore, not liable for the taxes on this Solicitation, Bidder shall state its tax-exempt status and cite the HRS chapter or section allowing the exemption.

4.C.3. The contract award, if any, will be made within thirty (30) calendar days after the bid opening date. The Bid offer shall be effective up to thirty (30) days after the bid opening date, during which time the Mobile Food Truck Concession Contract shall be executed.

5. MOBILE FOOD TRUCK CONCESSION CONTRACT FEES AND PAYMENTS:

- 5.1. The Mobile Food Truck Concession Contract fee shall be the Bid terms offered by the successful Bidder. The **monthly payment to be paid to DLNR shall be the minimum monthly payment or TEN PERCENT (10%) of the monthly gross receipts, whichever is greater, each and every month until the end of the Agreement.**
- 5.2. The minimum monthly fee as set forth in the successful Bidder's offer shall be not less than THREE THOUSAND U.S. DOLLARS (\$3,000.00). The Concessionaire shall pay to DLNR in advance at the DOBOR Offices, without notice or demand, the minimum monthly fee on a monthly basis, on or before the first day of the month preceding the month for which the fee is applicable and due. The gross receipts report prepared on a DLNR approved form and associated payment shall be paid no later than fifteen (15) calendar days following the end of the billable month. The first monthly payment shall be made upon execution of the Mobile Food Truck Concession Contract.
- 5.3. The Concessionaire agrees to pay all taxes assessed against the operation of the Mobile Food Truck Concession Contract herein granted.
- 5.4. The Concessionaire shall pay before they become delinquent any and all taxes of the Mobile Food Truck Concession Contract as required by the tax laws, rules and regulations of the State, the County, and the federal government, and all other charges incurred or assessed against the operation of the Mobile Food Truck Concession Contract.
- 5.5. The Concessionaire shall furnish the DLNR with a copy of its most recent tax return, tax clearance, and GET license (if not otherwise exempt) at the commencement and anniversary of the Mobile Food Truck Concession Contract every year.
- 5.6. All payments due DLNR shall be made payable to "Department of Land and Natural Resources", at 4 Sand Island Access Road, Honolulu, Hawaii, 96819, in a form acceptable to DLNR. Failure to pay any part of the concession contract fee when due shall constitute a breach of the Mobile Food Truck Concession Contract and may be grounds for termination by DLNR.
- 5.7. The Concessionaire will be charged an interest penalty at the rate of one percent (1%) simple interest per month or fraction thereof for any overdue payment of the concession contract fee and a service charge of FIFTY AND NO/100 DOLLARS (\$50.00) a month for each delinquent payment.

- 5.8. In the case of non-payment of the concession fees when due as provided herein, or violation of any other of the foregoing or following provisions by the Concessionaire, the BLNR shall have the right to terminate the Mobile Food Truck Concession Contract with written notice of the termination and the basis of the termination and shall have the right to remove the Concessionaire, with or without proceedings, 48 hours after the receipt of the written notice by the Concessionaire, without any liability to the DLNR or its officials, employees, or agents for damage to or loss of any property belonging to the Concessionaire or to the business of the Concessionaire. DLNR shall have the right to award the concession to another individual or entity for such time remaining in the term of the Mobile Food Truck Concession Contract or after the end of the term of said contract and to receive the fee rent therefore, holding the Concessionaire liable for any deficiency in the fee rent owing under the Mobile Food Truck Concession Contract. Any receipt of money paid by Concessionaire to the DLNR for delinquency of monthly fees shall not operate as a waiver of the right to terminate the Mobile Food Truck Concession Contract.
- 5.9. Concessionaire is responsible for providing all equipment, maintenance and repairs of equipment, security of equipment, and Concessionaire's personnel.

6. OPERATING CONDITIONS:

- 6.1 Concessionaire shall keep and maintain all equipment in good repair.
- 6.2 All signs posted by Concessionaire, shall be pre-approved by DLNR and must conform to applicable State and County sign requirements. 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.
- 6.2 The Concessionaire shall keep and maintain the mobile food concession and the adjoining areas within a radius of thirty (30) feet in a clean and sanitary manner and shall be responsible for providing a minimum of two (2) garbage and refuse containers within such thirty (30) foot area. The containers shall be either trap door or covered receptacles. The Concessionaire will keep watch over the area and remove all rubbish at the end of each workday. No equipment, structures or stands, mobile or otherwise will remain at the concession site overnight or during non-working days.
- 6.3 All employees handling food and beverage must have a valid current food handler's certificate issued by the Department of Health.
- 6.4 The Concessionaire shall, at its own cost and expense, engage and supervise competent exterminators to control vermin and pests as often as is necessary. Such extermination services shall be supplied in all areas where food is stored, prepared, or served.
- 6.5 All signs posted must conform to the State sign statutes and County sign ordinances. Signs will be displayed only during the hours that the concession is open for business.

- 6.6 Menu signs listing all items for sale and the prices at which they are to be sold must be plainly displayed at the mobile food concession.
- 6.7 The prices charged by the Concessionaire for services, food and drinks shall not be in excess of the prices prevailing elsewhere for the same kind and quality of services, food and drinks. Prior to the commencement of the Agreement, the successful bidder must submit menu prices to the DOBOR Administrator for approval. All future changes, of any kind, must have approval, in writing from the DOBOR Administrator.

7. NOTICES TO PARTIES:

Wherever required, notices to DLNR shall be sufficient if sent by certified mail, postage prepaid, addressed to the DOBOR Administrator at the DOBOR Offices; and notices to Concessionaire shall likewise be sufficient if sent by certified mail, postage prepaid, to Concessionaire at its address provided on its Bid. Any change in address shall be submitted in writing to the other party.

8. MISCELLANEOUS MOBILE FOOD TRUCK CONCESSION CONTRACT TERMS:

- 8.1. Concessionaire is deemed to be an independent contractor and not the agent, employee, partner, or joint venture of the State of Hawaii, DLNR, BLNR, or DOBOR. Services performed under the Mobile Food Truck Concession Contract shall not constitute nor be construed as employment with the State of Hawaii, DLNR, BLNR, or DOBOR. Furthermore, Concessionaire intentionally, voluntarily, and knowingly assumes the sole and entire liability (if any such liability is determined to exist) to its employees, agents, guests, and invitees or other persons for all loss, damage, or injury, including death, caused by Concessionaire or Concessionaire's officers, employees, agents, guests, and invitees in the course of their employment and during the term of the Mobile Food Truck Concession Contract.
- 8.2. The Mobile Food Truck Concession Contract shall not be varied in its terms or conditions except by an instrument in writing executed subsequently hereto by both parties.
- 8.3. In the event any term, covenant or condition of the Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract; provided, that the invalidity does not materially prejudice the rights and obligations of either DLNR or BLNR or Concessionaire contained in the valid terms, covenants or conditions of the Mobile Food Truck Concession Contract.
- 8.4. Concessionaire shall observe, perform and comply with all laws, codes, ordinances, rules and regulations of the United States, the State of Hawaii, the County jurisdiction, or any department or agency thereof.
- 8.5. In case of any doubt as to the interpretation of the terms of the Mobile Food Truck Concession Contract or the Solicitation, the interpretation given and made by DLNR shall govern and control.

- 8.6. Any Agreement arising out of this contract process is subject to the approval of the Department of the Attorney General as to form, and to all further approvals, including the approval of the Governor, as required by statute, regulation, rule, order, or other directive.
- 8.7. In the event 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 or attributable to any services provided by the Concessionaire under the Mobile Food Truck Concession Contract, then the Concessionaire shall pay all damages, fines, costs and reasonable attorneys' fees incurred by or imposed upon DLNR in connection with such litigation.
- 8.8. Concessionaire shall pay all costs and reasonable attorneys' fees, which may be incurred or paid by DOBOR in enforcing the covenants and provisions of the Mobile Food Truck Concession Contract, including the cost of collection of delinquent fees, taxes, and other charges.

9. INSURANCE AND INDEMNITY:

- 9.1. **Insurance.** 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 Hawaii, 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 State of Hawaii Department of Land and Natural Resources ("DLNR"). It is agreed that any insurance maintained by the State will apply in excess of, and not contribute with, insurance provided by Concessionaire's policy. Prior to entry and use of the Mobile Food Truck Concession Area or within fifteen (15) days from the effective date of this agreement, 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.** Not less than \$1,000,000 for each occurrence and \$2,000,000 aggregate.
 - b. **Workers' Compensation and Employer's Liability Insurance.** Not less than \$100,000 or as otherwise required by applicable federal and State of Hawaii laws.
 - c. **Fire and Extended Coverage Insurance for Other Hazards and Perils.** On all of the buildings, structures and other improvements, including the Concession Improvements, 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 \$2,000,000, per occurrence arising from any one cause.

- d. **Business Interruption Insurance.** Business interruption insurance insuring that the Concession fees in effect under this Mobile Food Truck Concession 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 Concession at the Mobile Food Truck Concession Area due to a risk required to be insured against by the Concessionaire hereunder. 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.** The Concessionaire, at its sole cost and expense, shall procure, maintain, and keep in full force and effect during and throughout the term of this Mobile Food Truck Concession Contract, State of Hawaii No-Fault motor vehicle (or automobile) liability insurance policy or policies of at least (1) \$100,000 per person per accident and \$300,000 per occurrence for bodily injury and death; (2) an aggregate of \$500,000 per accident or occurrence for bodily injury and death; and (3) \$50,000 per accident or occurrence for property damage; and (4) a combined single limit coverage of not less than \$500,000 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 adjacent areas. The insurance obtained by the Concessionaire hereunder shall cover all the Concessionaire's agents or the Concessionaire shall require the concessionaire's agents 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 shall be written on a "claims made" basis with a limit of liability of not less than TWO MILLION DOLLARS (\$2,000,000.00) per claim and a self-insured retention or deductible no greater than TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000.00). Concessionaire shall maintain in full force and effect, the following insurance coverage with minimum limits as follows:

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

- 9.2. **Concessionaire Responsible.** 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, the Concessionaire shall release, indemnify, defend, and keep and hold harmless and in full force and effect throughout the term of this agreement, insure the State, and 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 expenses arising out of or related to any such litigation, including, without limitation, paying any and all costs, charges, and reasonable attorneys' fees incurred or imposed on the State in connection with such litigation. In any action by the State for recovery of any sum due under this Mobile Food Truck 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 all costs, fees, charges, consultants' fees and attorneys' fees incurred or imposed on the State in connection with such actions.

- 9.3. **No Effect on Insurance.** The Concessionaire shall not use the Mobile Food Truck Concession Area or any portion thereof or permit any of the same to be used by any of the Concessionaire's agents to do or permit the doing of any act or thing upon the Mobile Food Truck Concession Area, which will either increase the premium rate of, be contrary to, or invalidate any fire, casualty, or liability insurance policies either required herein or carried by the State covering the Mobile Food Truck Concession Area or the buildings in which the same are located. The Concessionaire shall, in connection herewith, obey, observe and adhere to any and all present and future rules, regulations, orders and decision issued by the State or any governmental authority pursuant thereto, and the requirements and directions of fire or other underwriters on the applicable 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.
- 9.4. Each insurance policy required by this Agreement shall contain the following 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."
- 9.5. **Indemnity.** The Concessionaire shall release, indemnify, defend, save and hold harmless the State and all of its officers, employees, and agents from and against all costs, expenses, damages, and attorney's fees resulting from any and all claims, demands, suits, actions, or proceedings for property damage, or personal injury, including death, arising out of, resulting from violation of the law, or in connection with the operation of the concession by the Concessionaire.

10. BUSINESS RECORDS:

- 10.1. Concessionaire shall be responsible for establishing and maintaining strict internal accounting controls, policies, procedures, and for preparing and maintaining true, accurate and complete books and records to support and verify all sales. These accounting controls, policies, procedures, and records shall be subject to DLNR's review and approval.
- 10.2. Concessionaire shall maintain the books and records that relate to the Mobile Food Truck Concession Contract and any cost or pricing data for three (3) years from the date of final payment under the Mobile Food Truck Concession Contract.
- 10.3. There shall be a log of daily cash sales available for inspection when requested by DLNR. DLNR has the right to review and examine all financial records of the Concessionaire.

11. PROHIBITED USES:

- 11.1. Under no circumstances will Concessionaire, its own employees, or its patrons, agents, guests or invitees be allowed to reside or camp in the designated area(s), in any way, whether outside or aboard any vehicle.
- 11.2. Under no circumstances will Concessionaire, its own employees, or its patrons, agents, guests or invitees use the Mobile Food Truck Concession Area(s) for purposes other than a Mobile Food Truck Concession operation.
- 11.3. Concessionaire shall not alter, modify or change the designated Mobile Food Truck Concession Area(s) or any improvements located thereon without first obtaining prior written approval from the Chairperson.
- 11.4. Concessionaire shall not interfere with free access and passage within the premises or the adjacent public areas within the state small boat harbor, nor shall the Concessionaire limit or prohibit, in any way, ingress or egress to the small boat harbor.
- 11.5. Concessionaire shall at no time promote the feeding of wildlife on land or in the sea, nor sell any products of any kind for such a purpose. Concessionaire shall not, at any time, allow personal pets or other animals belonging to Concessionaire or any employee to be within the concession area or surrounding harbor.
- 11.6. Concessionaire shall not permit disorderly persons to remain or loiter about the Mobile Food Truck Concession Area.
- 11.7. The Concessionaire shall not park more than one vehicle (including mobile food concession) on the premises.
- 11.8. Concessionaire shall not, without written consent of DLNR, sublet, assign, hypothecate or mortgage this Mobile Food Truck Concession Contract or any rights thereunder; any consent given by DLNR shall not operate as a waiver of this condition for future subletting, assignment, hypothecating or mortgaging.

12. LOSS OR DAMAGE TO PROPERTY:

Concessionaire assumes the risk of any loss or damage to its equipment and other property on the Mobile Food Truck Concession Area. DLNR shall not be responsible or liable for any loss of, or damage to, the Concessionaire's equipment or other property on the Mobile Food Truck Concession Area.

If the Concessionaire's mobile food concession vehicle is unintentionally destroyed by fire or other catastrophe or through no fault of the Concessionaire such that it cannot be repaired within one (1) month after such fire or other catastrophe, the Concessionaire shall have the option within thirty (30) days from said casualty to terminate the Agreement. Termination shall be from the date of such damage or destruction and the Concessionaire shall pay concession fees only up to the time of destruction or damage. The amount of such concession fee shall be prorated on a thirty (30) day per month basis. The casualty claim by the Concessionaire shall be supported by a report from an independent source such as County Police or Fire Departments or insurance company claims adjuster.

13. COVENANT AGAINST DISCRIMINATION:

Concessionaire shall comply with all applicable federal and State laws prohibiting discrimination in rendering the services required under this Mobile Food Truck Concession Contract and in employment practices. Any unlawful discriminatory practices by Concessionaire shall be deemed a breach of the Mobile Food Truck Concession Contract and may be cause for termination of the Mobile Food Truck Concession Contract.

14. INSPECTIONS:

- 14.1. DLNR reserves the right to enter the said Mobile Food Truck Concession Contract area at all reasonable times, for the purpose of inspecting the area; observing the performance by Concessionaire of its obligations under the Mobile Food Truck Concession Contract; to serve, post, or keep posted, notices required by any statute, rule, or regulation of the federal, State, or County government; or for valid government business, including safety, emergencies, and law enforcement.
- 14.2. No abatement of concession payments shall be claimed by or allowed to Concessionaire by reason of the exercise by DLNR of any or all of the rights contained in Section 14.1; provided, that nothing contained in Section 14.1 shall be construed to permit DLNR 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 Mobile Food Truck Concession Area by Concessionaire.

15. UNSAFE, UNSANITARY OR UNSATISFACTORY CONDITIONS:

In the event an inspection by DLNR reveals that the Mobile Food Truck Concession Area designated for Concessionaire's use is not in a safe, sanitary and otherwise satisfactory operating condition, Concessionaire, upon being so informed by written notice from DLNR to correct the condition, shall promptly proceed to correct the condition within thirty (30)

days to the satisfaction of DLNR. If within ten (10) calendar days following the date of the notice, or within additional time as DLNR may allow, Concessionaire has not substantially complied with the provisions of such notice, DLNR shall then have the right to remedy the condition at the full expense of Concessionaire, and Concessionaire shall promptly fully reimburse DLNR for any and all cost incurred thereof.

16. FAILURE TO EXECUTE MOBILE FOOD TRUCK CONCESSION CONTRACT:

If the Bidder to whom a Mobile Food Truck Concession Contract is awarded fails or neglects to enter into the Mobile Food Truck Concession Contract and to furnish satisfactory security as required by Chapter 102, HRS, within ten (10) days after award or within such further time as DLNR may allow, the amount of Bidder's bid guaranty shall be deposited into the boating special fund, established by HRS 248-8 and lease revenue will be deposited into the fund pursuant to HRS 200-2.5. DLNR may then award the Mobile Food Truck Concession Contract to the next highest Bidder.

17. CONTACT INFORMATION AND QUESTIONS:

For this Solicitation, DLNR's contact person is Richard Howard, Property Manager at DOBOR, DLNR whose address is: 4 Sand Island Access Road, Honolulu, Hawaii, 96819, Telephone: (808) 587-1964 and Email: richard.t.howard@hawaii.gov. All questions regarding the contents of this Solicitation must be submitted in writing. Any response will be provided to all Bidders in writing.

18. REQUIRED REVIEW:

- 18.1 Bidder is responsible for becoming knowledgeable of all bid and Mobile Food Truck Concession Contract requirements and documents and making all necessary investigations and examinations of the Mobile Food Truck Concession Area. Bidder accepts the Mobile Food Truck Concession Area in "AS IS" condition. Bidder shall be responsible for becoming familiar with the physical location and condition, the characteristics of the Mobile Food Truck Concession Area, and the excluded areas, and shall judge for itself all of the circumstances affecting its offer. Failure to do so will not be grounds for any claim that the Bidder did not understand the circumstances and will not act to relieve any condition of the Mobile Food Truck Concession Contract or Solicitation documents. The submission of a Bid shall be considered conclusive evidence that the Bidder has made such investigations and examinations.
- 18.2 Should a Bidder find discrepancies or ambiguities in or omissions from the bidding documents, or be in doubt as to their meaning, the Bidder shall submit a written request for interpretation or correction to DLNR in a timely manner before the close of bidding. Any interpretation or correction of the bidding documents will be made only by written addendum to all Bidders receiving a set of bid documents. The State will not be responsible for any oral statements or representations.

19. REQUIREMENT OF MOBILE FOOD TRUCK CONCESSION CONTRACT PERFORMANCE BOND:

- 19.1. At the time of Mobile Food Truck Concession Contract execution, the successful Bidder shall file a good and sufficient surety bond on the form provided in this Solicitation (either Performance Bond or Performance Bond (Surety)) conditioned on the full and faithful performance of the Mobile Food Truck Concession Contract, as required by section 102-11, HRS, which bond shall be in an amount equivalent to four (4) months of the Bidder's minimum monthly Mobile Food Truck Concession Contract fee. Such bond shall by its terms inure to the benefit of the State.
- 19.2. Pursuant to section 102-11 and section 102-12, HRS, if the surety or sureties on any bond is other than a surety company authorized to do business under the laws of the State of Hawaii, there shall be not more than four (4) such sureties who shall severally justify in such amounts as, taken together, will aggregate the full amount of the bond, and severally deposit with the Chairperson certified checks, certificates of deposit, or share certificates (unconditionally assigned or on demand on or after such period set by the Chairperson), or bonds, stocks or other negotiable securities, or execute and deliver to the Chairperson a deed of trust of real property, all of such character as shall be satisfactory to the Chairperson, and each surety shall furnish such security to the full cash value of one hundred percent (100%) of the amount for which the surety shall have justified.

20. MOBILE FOOD TRUCK CONCESSION CONTRACT EXECUTION:

- 20.1. The Mobile Food Truck Concession Contract, when executed, becomes a formal contract with the successful Bidder. The Mobile Food Truck Concession Contract shall be executed by Concessionaire and returned to DLNR along with proper insurance documentation, bond, first month's minimum payment, and all other required documents, within ten (10) days after the award of the contract or within such time as the Chairperson may allow. Concessionaire will be given a notice to proceed upon receipt thereof.
- 20.2. Other documents required to be submitted to DLNR along with the Mobile Food Truck Concession Contract executed by Concessionaire are (a) a tax clearance certificate issued by the State Department of Taxation and the Internal Revenue Service, which must have an original green certified copy stamp and be valid when it is submitted to DLNR; (b) a certificate of compliance issued by the State Department of Labor and Industrial Relations for unemployment insurance, workers' compensation, temporary disability insurance, and prepaid health care, which must be valid when it is submitted to DLNR; and (c) a certificate of good standing from the State Department of Commerce and Consumer Affairs ("DCCA") (which is valid when it is submitted to DLNR), unless the Concessionaire is a sole proprietor who has not registered a business name with DCCA and therefore need not provide this certificate.

- 20.3. In the alternative, instead of the certificates required by Section 20.2, Concessionaire may submit to DLNR a "Certificate of Vendor Compliance" obtained through Hawaii Compliance Express at the State Procurement Office, Department of Accounting and General Services, which shall be kept compliant.
- 20.4. DLNR is not liable for any work, contract, costs, expense, loss of profits or any damages whatsoever incurred by Concessionaire prior to the commencement date of the Mobile Food Truck Concession Contract, during the contractual period, and after the expiration of the contract.

[REMAINDER OF PAGE IS BLANK]

SURETY BID BOND

KNOWN TO ALL BY THESE PRESENTS:

Bond No _____

That we _____
(Full Name or legal title of offeror)

as Offeror, hereinafter called Principal, and _____
(Name of bonding company)

as Surety, hereinafter called Surety, a corporation 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 as Owner, hereinafter called Owner, in the penal sum of not less than five percent (5%) of the bid, provided that if the amount bid exceeds \$50,000.00, the bid deposit shall be in a sum not less than \$2,500.00 plus two percent (2%) of the amount in excess of \$50,000.00.

Dollars (\$_____)
lawful money of the United States of America, for the payment of which sum well and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS:

The Principal has submitted an offer for: Invitation for Bids ("IFB") Mobile Food Truck Concession Contract for Mobile Food Truck Concession at Ala Wai Small Boat Harbor, TMK (1) 2-3-037:012 (Portion) IFB No. LO-23-001, Oahu, Hawaii.

NOW, THEREFORE:

The condition of this obligation is such that the Principal shall enter into a Mobile Food Truck Concession Contract with the Owner in accordance with the terms of such offer, and give such bond or bonds as may be specified in the Solicitation or Mobile Food Truck Concession Contract documents with good and sufficient surety for the faithful performance of such Mobile Food Truck Concession Contract and for the prompt payment of labor and material furnished in the prosecution thereof as specified in the Solicitation then this obligation shall be null and void, otherwise to remain in full force and effect.

Signed this _____ day of _____ 2023

Name of Principal (Bidder)

Signature

Print Name

Title

Name of Surety

Signature

Print Name

Title

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

PERFORMANCE BOND

KNOW TO ALL BY THESE PRESENT:

That we, _____

(full legal name and street address of Concessionaire)

as Concessionaire, hereinafter called Contractor, is held and firmly bound unto the Department of Land and Natural Resources, State of Hawaii, its successors and assigns, as Obligee, hereinafter called Obligee, in the amount of (2x the base monthly rent):

DOLLARS, (\$)

lawful money of the United States of America, for the payment of which to the said Obligee, well and truly to be made, Contractor binds itself, its heirs, executors, administrators, successors and assigns, firmly by these presents. Said amount is evidenced by:

□ Legal tender;

- Share Certificate unconditionally assigned to or made payable at sight to

Description

Certificate of Deposit, No. _____ dated _____

Issued by:

drawn on

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:

Cashier's Check No. _____ dated _____

Issued by: _____

drawn on:

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:

Issued 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: _____

Treasurer's Check No. _____ dated _____

Issued by: _____

drawn on _____

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: _____

Official Check No. _____ dated _____

Issued by: _____

drawn on _____

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: _____

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 Concession Contractor has by written contract dated _____ entered into Mobile Food Truck Concession Contract with Obligee for the following Project: Mobile Food Truck Concession Contract for Mobile Food Truck Concession at Ala Wai Small Boat Harbor, TMK (1) 2-3-037:012 (Portion), IFB No. LO-23-001, hereinafter called Mobile Food Truck Concession Contract or Concession Contract, which Mobile Food Truck Concession 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 Concession Contract in accordance with, in all respects, the stipulations, agreements, covenants and conditions of the Concession Contract as it now exists or may be modified according to its terms, in the Concession Contract free from all liens and claims and without further 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 said use and occupancy thereof or the manner of the same or the neglect of the Contractor or its agents or servants or the improper performance of the Mobile Food Truck Concession Contract by the Contractor or its agents or servants 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 Concession 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 Mobile Food Truck Concession Contract or in this bond in accordance with the terms thereof.

The amount of this bond may be reduced by and to the extent of any payment or payments made in good faith hereunder.

Signed this _____ day of _____ 2023.

Name of Concessionaire

Signature

Print Name

Title

* ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

PERFORMANCE BOND (SURETY)

KNOW TO ALL BY THESE PRESENTS:

That _____
(full legal name and street address of Concessionaire)

as Contractor, hereinafter called Principal, and _____

(name and street address of bonding company)

as Surety, hereinafter called Surety, a corporation(s) 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 equal to two times (2x) the monthly base rent of
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 has entered into a Mobile Food Truck Concession Contract with Obligee on _____, _____; for the following project: Mobile Food Truck Concession Contract for Food Truck Concession at Ala Wai Small Boat Harbor, TMK (1) 2-3-037:012 (Portion), IFB No. LO-23-001, hereinafter called Mobile Food Truck Concession Contract, which 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 Mobile Food Truck Concession Contract in strict accordance with the terms of the Mobile Food Truck Concession Contract as said Mobile Food Truck Concession Contract may be modified or amended from time to time; then this obligation shall be void; otherwise, 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 Mobile Food Truck Concession Contract, including the work to be performed thereunder, and the specifications, 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 Mobile Food Truck Concession Contract.

In the event of Default by the Principal, of the obligations under the Mobile Food Truck Concession Contract, then after written Notice of Default from the Obligee to the Surety and the Principal and subject to the limitation of the penal sum of this bond, Surety shall remedy the Default, by paying moneys to the Obligee in satisfaction of the surety's performance obligation on this bond.

Signed this _____ day of _____, _____.

(Seal)

Name of Principal (Bidder)

Signature

Title

(Seal)

Name of Surety

Signature

Title

ALL SIGNATURES MUST BE ACKNOWLEDGED
BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

EXHIBIT "A-1"
ALA WAI SMALL BOAT HARBOR

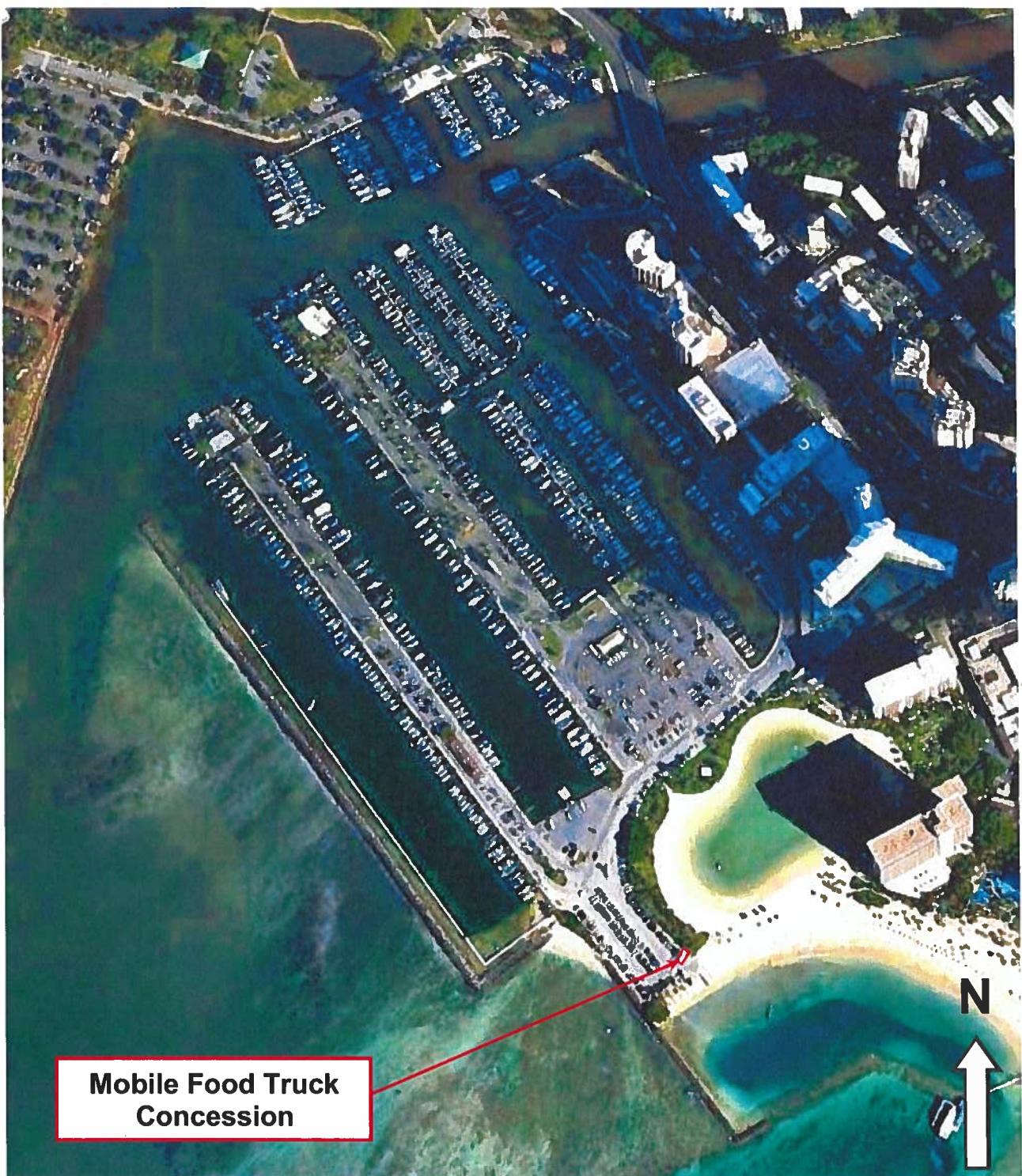


EXHIBIT "A-2"
MOBILE FOOD TRUCK CONCESSION

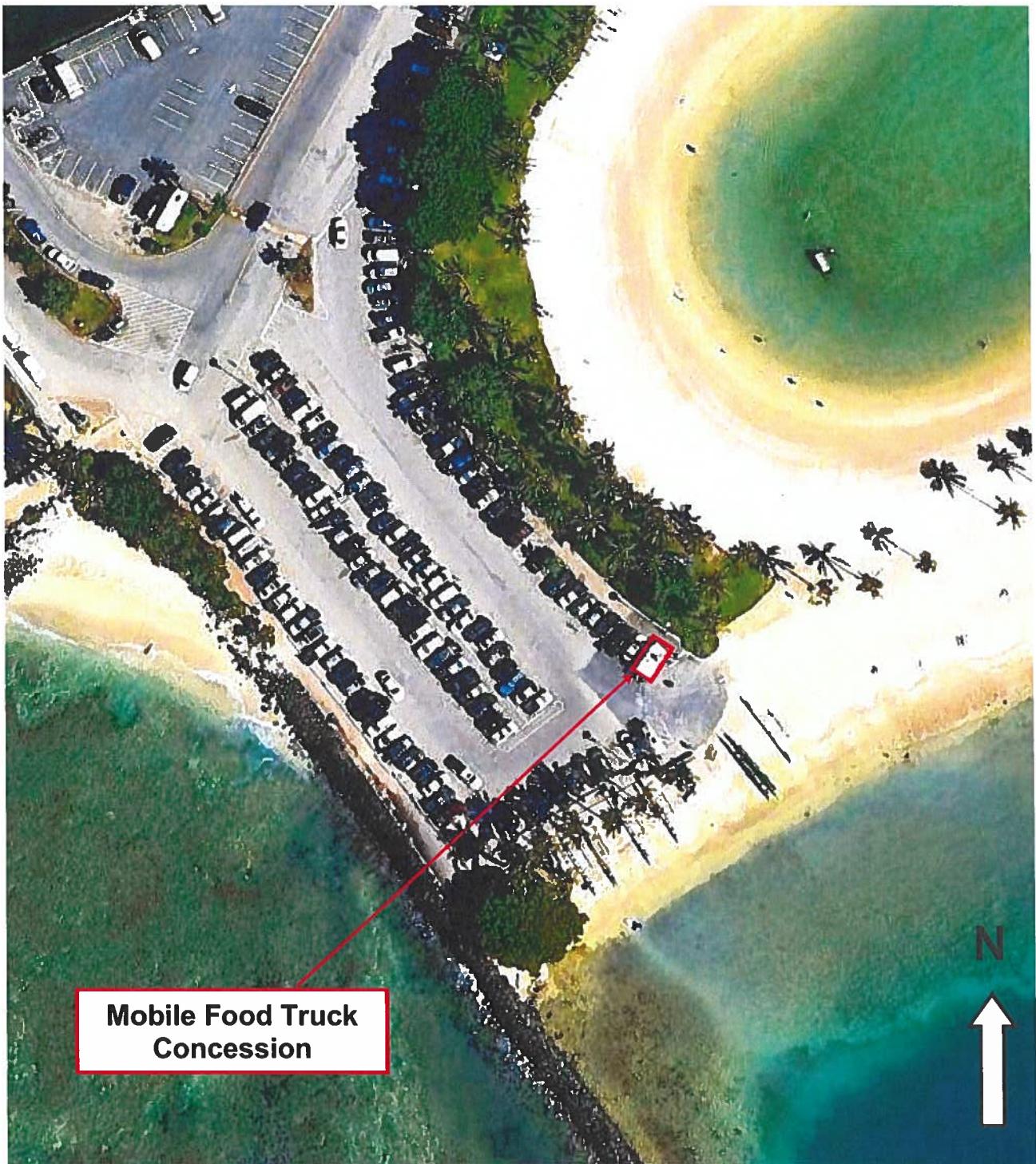


EXHIBIT "B"
GUARANTY OF CONTRACT

WHEREAS, _____, _____, (address) _____, (###) ###-#### hereinafter "Concessionaire", is about to execute a document entitled "Contract" dated _____ 2023, wherein the STATE will contract the premises to Concessionaire, and

WHEREAS, _____, hereinafter "Guarantor", has a financial interest in Concessionaire, and

WHEREAS, the STATE would not execute the contract if Guarantor does not execute and deliver to STATE this Guaranty of Contract, hereinafter "Guaranty."

NOW THEREFORE, in consideration of the execution of the Guaranty of Contract Guarantor hereby jointly, severally, unconditionally and irrevocably guarantees the prompt payment by Concessionaire of all fees and all other sums payable by Concessionaire under the Contract and the full, faithful and prompt performance by Concessionaire of each and every one of the covenants, terms, and conditions of the Contract to be kept and performed by Concessionaire.

This Guaranty shall not be released, modified, or otherwise affected by the failure or delay on the part of STATE to enforce any of the rights or remedies of the STATE under the Contract.

No notice of default by Concessionaire under the Contract needs be given by the STATE or Guarantor, it being specifically agreed that the guarantee of the undersigned is a continuing guarantee under which the STATE may proceed immediately against Concessionaire and against Guarantor following any breach or default by Concessionaire or for the enforcement of any rights or remedies which the STATE may have against Concessionaire under the terms of the Contract or at law or in equity.

Guarantor does hereby subordinate all existing or future indebtedness of Concessionaire to Guarantor to the obligation owed to STATE under the Contract and this Guaranty.

The term "STATE" refers to and means the STATE named in the Contract and includes any of STATE's successors and assignees.

The term "Concessionaire" refers to and means the Concessionaire named in the Contract and includes any of Concessionaire's successors and assignees.

No provision of this Guaranty or right of STATE may be waived, nor may the Guarantor be released from their obligations except in writing signed by STATE.

Any litigation concerning this Guaranty shall be initiated in a state court of competent jurisdiction in Honolulu, Hawaii and the Guarantor consents to the jurisdiction of such court. This Guaranty shall be governed by the laws of the State of Hawaii in and for the purposes of any rules regarding conflicts of law.

If any Guarantor is a corporation, partnership, or limited liability company, each individual executing this Guaranty on said entity's behalf represents and warrants that he or she is duly authorized to execute this Guaranty on behalf of such entity.

Guarantor represents that he/she has read and understand the terms of this Guaranty of Contract and has either consulted counsel regarding the same or after having an opportunity to do so have knowingly decided not to consult counsel regarding the terms of this Guaranty.

Signed _____ Executed on _____, 2023

Printed Name: _____

Its: _____

Name of Entity and place of incorporation:

Signed _____ Executed on _____, 2023

Printed Name: _____

Its: _____

Name of Entity and place of incorporation:

Guarantor

ALL SIGNATURES MUST BE ACKNOWLEDGED BY A NOTARY PUBLIC

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

EXHIBIT "C"

**CONCESSION CONTRACT FOR MOBILE FOOD TRUCK CONCESSION
AT ALA WAI SMALL BOAT HARBOR
TMK (1) 2-3-037:012 (Portion)
IFB No. LO-23-001**

THIS CONTRACT IS MADE AND ENTERED INTO as of _____, 2023, by and between the STATE OF HAWAII, hereinafter called the "STATE," through the BOARD OF LAND AND NATURAL RESOURCES, DEPARTMENT OF LAND AND NATURAL RESOURCES, and _____, hereinafter called the "CONCESSIONAIRE," for the operation of a Mobile Food concession by the CONCESSIONAIRE at the Ala Wai Small Boat Harbor, Oahu, Hawaii, for a period of three (3) years commencing on _____ and ending on _____.

The written Bid Proposal submitted by CONCESSIONAIRE for IFB No. LO-23-001 was accepted by the STATE as the highest and best bid by a responsive and responsible Bidder submitted pursuant to a call for offers made on _____, in accordance with chapter 102, Hawaii Revised Statutes.

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 Contract, which includes all provisions and representations set forth in the Notice to Bidders, Notice of Intention to Bid Form, Qualifications, Qualification Questionnaire submitted by Concessionaire, Bid Proposal submitted by Concessionaire, Specifications, Exhibits, and any other part of Invitation for Bids ("IFB") Mobile Food Truck Concession Contract for Mobile Food Truck Concession at Ala Wai Small Boat Harbor, Oahu, Hawaii, TMK (1) 2-3-037:012 (Portion), IFB No. LO-23-001, issued by the State of Hawaii, Department of Land and Natural Resources, and also includes the Special Terms and Conditions attached to this Contract as Exhibit "1", all of which are incorporated by reference herein.

B. Compensation. As compensation to the STATE for the right of the CONCESSIONAIRE to operate a concession in accordance with the Scope of Work described in paragraph A hereinabove, at the Ala Wai Small Boat Harbor, the CONCESSIONAIRE agrees to pay the State of Hawaii, Department of Land and Natural Resources, Division of Boating and Ocean Recreation, during the term of this contract, DOLLARS (\$_____), each and every month, from the concessionaire each and every month, in accordance with the Bid Proposal submitted by CONCESSIONAIRE and all other terms, conditions, and provisions of this Contract, or pay TEN PERCENT (10%) of the gross receipts, whichever is greater. The Base Rent shall be paid in advance monthly and the percentage rent portion, if any shall be due no later than fifteen (15) calendar days following the end of the billable month and include a Statement of Gross Receipts prepared on a DLNR approved form, which shall be completed by the Concessionaire and shall be provided each and every month from _____, 2023 to _____, 2026, in strict accordance with the Bid Proposal submitted by Concessionaire, Specifications, Exhibits, and any addenda to the Specifications, which are attached to this Agreement.

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

Approved by the Board
of Land and Natural
Resources at its
meeting held on:
December 10, 2021.

APPROVED AS TO FORM:

STATE OF HAWAII

By: _____

Dawn N. S. Chang

Chairperson

Deputy Attorney General

Board of Land and Natural Resources

CONCESSIONAIRE*

Print Name: _____

By: _____

Its: _____

Print Name: _____

By: _____

Its: _____

*Evidence of the authority of the CONCESSIONAIRE's representative to sign this contract for the CONCESSIONAIRE must be attached.

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this ____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires: _____

ACKNOWLEDGMENT:

STATE OF HAWAII)
COUNTY OF) SS.
)

On this _____ day of _____, 2023, before me personally appeared

and

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

Notary Public, State of Hawaii

Print Name

My Commission Expires:

EXHIBIT "1"

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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract.

ARTICLE II. COMPLIANCE WITH ENVIRONMENTAL LAWS

A. **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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract. Failure of the Concessionaire to comply with any Environmental Laws shall constitute a breach of this Mobile Food Truck Concession Contract for which the STATE shall be entitled, in its discretion, to terminate this Mobile Food Truck Concession 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 State 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 Mobile Food Truck Concession Contract.

3. **Notice to STATE.** 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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.

B. 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract. The acceptance by the State of the payment of concession fees 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 fees 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract. The State and the Concessionaire acknowledge and agree that there are no third-party beneficiaries to this Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract shall be governed by, interpreted and construed in accordance with the laws of the State of Hawaii. Any action arising out of this Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract.

ARTICLE XI. SEVERABILITY

In the event that any provision of this Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract.

ARTICLE XII. WAIVER

The failure of the State to insist upon the strict compliance with any term, provision, or condition of this Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the State and the Concessionaire relative to this Mobile Food Truck Concession Contract. This Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract.

ARTICLE XV. TERMINATION FOR CAUSE

In addition to any other remedies provided for by this Mobile Food Truck Concession Contract, if the State learns of a material breach of any provision of the Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract.

ARTICLE XVI. POLLUTION CONTROL

If during the performance of this Mobile Food Truck Concession 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 Mobile Food Truck Concession Contract requires an adjustment of the time for performance, the Mobile Food Truck Concession Contract shall be modified in writing accordingly.

[REMAINDER OF PAGE IS BLANK]

Signature: 

Email: ed.r.underwood@hawaii.gov