REQUEST FOR QUALIFICATIONS / REQUEST FOR PROPOSALS ("RFQ/RFP")

FOR

STATE-OWNED LANDS AT MALAEKAHANA STATE RECREATION AREA (Kahuku Section)

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS

May 16, 2014
NOTICE OF SALE
PUBLIC AUCTION FOR SALE OF LEASE FOR COMMERCIAL CAMPGROUND
PURPOSES
STATE OWNED LANDS IN MALAEKAHANA STATE RECREATION AREA
(KAHUKU SECTION), O'AHU, HAWAI'I

The State of Hawaii Department of Land and Natural Resources ("DLNR") is issuing a Request for Qualifications/Request for Proposals ("RFQ/RFP") for parties interested in leasing approximately 36.288 acres of state-owned lands at Malaekahana State Recreation Area, Kahuku Section, for campground purposes on Oahu, Hawaii, identified by Tax Map Key Numbers TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65, inclusive.

DLNR intends to select a qualified applicant meeting certain eligibility criteria whose proposal meets DLNR's RFQ/RFP objectives and RFQ/RFP selection criteria. The selected Applicant will enter into exclusive negotiations with DLNR for a lease agreement that sets forth the terms and conditions under which the selected Applicant would be allowed to lease the subject property for a term of five (5) years.

To be eligible to participate in this RFQ/RFP process, interested parties must first complete and submit an Application and Notice of Intent by no later than 4:00 p.m., June 19, 2014. A completed Application and Notice of Intent may be submitted to any of the DLNR District State Parks Offices listed below or by facsimile to (808) 587-0311. Anyone who fails to submit a completed Application and Notice of Intent by this deadline shall not be eligible to participate in this RFQ/RFP process. The Application and Notice of Intent form is included in the RFQ/RFP package.

Copies of the RFQ/RFP package may be obtained at the following DLNR State Parks District Offices or downloaded from the DLNR website at http://dlnr.hawaii.gov/dsp/rfp/2014-Malaekahana

Oahu State Parks District Office
1151 Punchbowl Street, Room 310
Honolulu, Oahu 96813

Maui State Parks District Office
54 S. High Street, Room 101
Wailuku, Maui 96793

Hawai'i State Parks District Office
75 Aupuni Street, Room 204
Hilo, Hawai'i 96720

Kauai State Parks District Office
3060 Eiwa Street, Room 306
Lihue, Kauai 96766

Maps showing a metes and bounds description and classification of the land may be reviewed at the office of the DLNR Board of Land and Natural Resources ("BLNR") or at the DLNR Land Division office in Honolulu, Hawai'i.

The first phase of the RFQ/RFP process (i.e., the RFQ) requests the submittal of the Applicant's statement of qualifications and general plan to any DLNR State Parks District Office by no later than 4:00 p.m. June 26, 2014. DLNR, through an evaluation committee will determine which Applicants meet the RFQ criteria (alternatively, DLNR may form a short list of the "most qualified" Applicants) and are eligible to participate in the second step of the RFQ/RFP process (i.e., the RFP).

The subsequent RFP phase will invite eligible applicants ("Bidders") to submit a detailed proposal for the subject property. Any lease rents proposed by the Bidder must provide a Minimum Monthly Rent of at least $2,500 per month and a percentage rent of at least 7 percent of gross receipts. An evaluation committee approved by BLNR will evaluate the submitted
proposals, and the Bidder whose proposal best satisfies the RFQ/RFP objectives and selection criteria in the assessment of the evaluation committee will be recommended to the Chairperson for selection. The Chairperson will make the final decision as to whether the recommended Bidder meets the objectives and selection criteria. Once approved by the Chairperson, the “Selected Bidder” and DLNR will enter into exclusive negotiations for a lease agreement. Approval of the lease terms and conditions must be obtained from the BLNR before the lease may be executed.

The commencement date of the lease will be dependent upon the termination of the current revocable permit for the premises and the clearing of the premises by the permittee in accordance with the terms of the permit.

Additional deadlines and significant dates are set forth in the RFQ/RFP.

DLNR reserves the right to amend, modify, cancel or terminate the RFQ/RFP or proposed lease; request modifications to any application, proposal or proposed lease or reject any and all applications, or proposals, when it is in the best interest of DLNR. DLNR further reserves the right to negotiate with the Selected Bidder any additional terms, conditions, or modifications to the terms set forth in this RFQ/RFP or in the Selected Bidder's proposal; provided, however, that any negotiated modifications shall not result in the rents or payments to DLNR being less than the fees or payments proposed in the Selected Bidder's proposal.

If there are any inquiries regarding this RFQ/RFP, or if any person requires a special accommodation (e.g., large print materials, sign language interpreters), contact Stephen Soares at (808) 587-0505 or via email Stephen.D.Soares@Hawaii.gov or Curt Cottrell at (808) 587-0289.

BOARD OF LAND AND NATURAL RESOURCES

[Signature]

William J. Aila, Jr., Chairperson
APPLICATION AND NOTICE OF INTENT

STATE-OWNED LANDS AT MALAEKAHANA STATE RECREATION AREA
(KAHUKU SECTION)

REQUEST FOR QUALIFICATIONS/REQUEST FOR PROPOSALS (“RFQ/RFP”)

Parties interested in participating in this RFQ/RFP process for approximately 36.288 acres of state-owned lands in Malaekahana State Recreation Area at Ko‘olauloa, Lā‘ie, O‘ahu, Hawaii, must first complete and submit this Application and Notice of Intent no later than 4:00 p.m. (HST), June 19, 2014. Completed Applications and Notices of Intent may be submitted to any of the Department of Land and Natural Resources State Parks District Offices (see Section I of the RFQ/RFP for addresses) or by facsimile to (808) 587-0311. Any party that fails to submit a completed Application and Notice of Intent by the above deadline shall not be eligible to participate in the ensuing RFQ/RFP process.

Name of Applicant: __________________________________________
Mailing Address: __________________________________________
Contact Person and Title: __________________________________________
Phone Number: ___________________ Fax Number: ___________________
Email Address: __________________________________________
Type of Organization: __________________________________________
State or Country of Formation; and Date of Formation: ___________________
Registered to do business in Hawaii? If Yes, as of what date? ___________________

List the names, addresses and ownership interests of individuals or organizations with at least a 10% ownership interest in the Applicant: (attach separate page if necessary)

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
<th>% Interest</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

List all State of Hawaii leases, permits, licenses, easements, sales, etc. which the Applicant is or has been a party to, including as a partner, director, officer, shareholder, or LLC member: (attach separate page if necessary)

<table>
<thead>
<tr>
<th>Doc. No.</th>
<th>Type of Agreement</th>
<th>Term of Agreement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Name/Title: __________________________________________
Signature of Authorized Representative

Date: __________________________________________
Table of Contents

NOTICE OF SALE ..................................................................................................................................... II

APPLICATION AND NOTICE OF INTENT .............................................................................................. IV

TABLE OF CONTENTS ................................................................................................................................. 5

SECTION I. INTRODUCTION, PROPERTY INFORMATION AND SUMMARY ........................................... 8

BACKGROUND AND HISTORY. ....................................................................................................................... 8

SUBJECT PROPERTY ...................................................................................................................................... 9

EXISTING RENTAL CABINS NOT INCLUDED IN THIS OFFERING .............................................................. 10

TERM OF THE LEASE AND LONGER TERM FUTURE RFQ/RFP PLANS ...................................................... 10

COMMENCEMENT DATE OF LEASE ............................................................................................................. 10

BOARD OF LAND AND NATURAL RESOURCES’ AUTHORITY ................................................................. 11

CHAPTERS 171 AND 343, HAWAII REVISED STATUTES ............................................................................. 11

AUTHORIZATION FOR USE OF TEMPORARY STRUCTURES ........................................................................ 11

CONDITION OF SUBJECT PROPERTY .......................................................................................................... 11

CAMPGROUND SITE PLAN ............................................................................................................................. 12

COMFORT STATION IMPROVEMENTS ........................................................................................................... 13

DOCUMENT LIBRARY .................................................................................................................................... 13

APPLICATION, NOTICE OF INTENT AND STATEMENT OF QUALIFICATIONS ............................................. 14

RFQ/RFP SOLICITATION AND SELECTION PROCESS ............................................................................ 14

APPROVAL OF LEASE AGREEMENT AND EXCLUSIVE NEGOTIATIONS PERIOD ........................................ 14

SIGNIFICANT DATES AND DEADLINES ...................................................................................................... 15

ISSUING OFFICE AND CONTACT PERSONS ............................................................................................... 15

REQUEST FOR CLARIFICATION .................................................................................................................... 16

CONFIDENTIAL INFORMATION .................................................................................................................... 16

DLNR STATE PARKS DISTRICT OFFICES ...................................................................................................... 16
SECTION II. RFQ/RFP OBJECTIVES ........................................................................................................... 17

SECTION III. REQUEST FOR QUALIFICATIONS ("RFQ") ................................................................. 18
INTRODUCTION ........................................................................................................................................ 18
APPLICATION AND NOTICE OF INTENT ......................................................................................... 18
STATEMENT OF QUALIFICATIONS/ GENERAL PLANS - SUBMITTAL REQUIREMENTS. ............. 18
STATEMENT OF QUALIFICATIONS - SUBMITTAL DEADLINE ......................................................... 21
RFQ EVALUATION PROCESS ............................................................................................................. 21

SECTION IV. REQUEST FOR PROPOSALS ("RFP") ............................................................................ 22
INTRODUCTION ....................................................................................................................................... 22
RFP SUBMITTAL REQUIREMENTS ........................................................................................................... 22
RFP SUBMITTAL DEADLINE .................................................................................................................... 24
RFP EVALUATION PROCESS .................................................................................................................. 24

SECTION V. CRITERIA FOR SELECTION ............................................................................................ 26
RFQ Criteria ............................................................................................................................................. 26
REVIEW AND APPEAL RIGHTS ............................................................................................................. 27
RFP Criteria ............................................................................................................................................. 27
Event of a Tie in Total Score .................................................................................................................... 28
Objection to the Selection of Lessee ...................................................................................................... 28

SECTION VI. EXCLUSIVE NEGOTIATIONS / LEASE AGREEMENT .................................................. 29
EXCLUSIVE NEGOTIATIONS ................................................................................................................... 29
LEASE AGREEMENT ............................................................................................................................... 29

SECTION VII. OTHER TERMS AND CONDITIONS ............................................................................ 30
FEES AND COSTS .................................................................................................................................. 30
TITLE TO PROPERTY ............................................................................................................................... 30
DLNR DISCRETION AND RESERVATION OF RIGHTS; PROPOSALS NOT SELECTED ..................... 30
ATTACHMENTS .................................................................................................................................... 31
ATTACHMENT 1 – TAX MAP KEY ........................................................................................................ 31
ATTACHMENT 2 – DOCUMENT LIBRARY .......................................................................................... 33
ATTACHMENT 3 – SITE MAP ............................................................................................................. 34
ATTACHMENT 4 – CAMPSITE AND TEMP STRUCTURE AREAS ....................................................... 35
ATTACHMENT 5 – EVALUATION SCORING SHEETS ....................................................................... 36
Attachment 6 - DLNR General Lease Form .................................................................................... 38
BACKGROUND AND HISTORY.

The State of Hawaii, ("State") Department of Land and Natural Resources ("DLNR"), Division of State Parks ("State Parks") is responsible for managing 71 parks and other interest areas comprising nearly 34,000 acres of public lands including many of the State's most significant recreational, cultural, historic and natural resource areas. State Parks' responsibilities include managing and maintaining recreation areas and facilities in state parks, state monuments, park reserves, state waysides, historical and cultural sites and hiking trails - many of which are located in conservation districts. In addition, State Parks manages capital improvement projects, issues and manages leases and permits for agricultural, pastoral, cultural, general commercial, concession, camping, transient accommodations and other uses while managing park infrastructure. State Parks also oversees the master planning processes that may be warranted for each of these areas.

To fulfill these management duties and responsibilities, State Parks now relies more significantly on special fund revenues generated from leases and permits for the use of public lands. As the traditional source of funding (i.e., general fund taxpayer revenue) has decreased over the last two decades, it has become increasingly necessary for State Parks to look for new sources of funds to ensure the parks remain financially sustainable while serving DLNR's mission to enhance, protect and preserve State's resources.

In October of 1980, the State acquired the Malaekahana lands at the northern end of Malaekahana Bay which comprise 19 separate parcels through condemnation in an effort to provide greater access for both residents and visitors to recreation opportunities along the North Shore of O'ahu. That property, combined with 74 acres of land owned by the State along the Southern portion of Malaekahana Bay became what is designated the Malaekahana State Recreation Area (MSRA). It is identified in two parts; the Kahuku and Kalanai Sections. Although the State's 1977 Master Plan contemplated the State owning all of the lands Makai of Kamehameha Highway between Lā'iewai and Maleakahana Streams, only lands on either end of Maleakahana Bay were ultimately acquired. The lands were then identified as the Kahuku Section (on the north side of the bay containing approximately 36.288 acres) and Kalanai Section (on the south side containing approximately 74 acres), and on June 3, 2002, the properties were set aside to the Division of State Parks for park and recreational purposes by Governor's Executive Order No. 3928.

When the properties in the Kahuku Section were acquired, there were existing beach houses on several of the parcels, some of which remain today and were rented on a nightly basis in connection with the existing campground operation. All of the rental cabins have since closed due to their delapidated condition. On the southern end of the Kahuku Section, State Parks maintains an area now separate from the current campground and provides day use beach access and a comfort station.

Funds from the Land and Water Conservation Fund were used both to acquire the property and used for improvements. With limited exceptions, the use of said funds requires that the property be used for active outdoor recreation at all times in perpetuity.

The area of the Subject Property (more specifically defined below) includes all of the Kahuku Section including the portion operated by State Parks for beach access and a comfort station. In addition, a parcel currently used as a residence for DLNR's Division of Conservation and Resources Enforcement (DOCare) is included in this offering. The structure is planned for
demolition in 2014 together with all of the other rental cabins, the existing campsite office and the existing security residence. The Subject Property is identified as Tax Map Key (TMK’s: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65 consisting of 19 separate but contiguous parcels comprising approximately 36.288 acres of land in total and includes all of the lands comprising the Kahuku Section.

In December of 2003, the Board of Land and Natural Resources (BLNR) authorized the issuance of an RFQ/RFP to “Issue, Evaluate, Accept and Select a Request for Qualifications/Request for Proposals to Develop, Operate, and Maintain Public Recreational Facilities at Mālaekahana State Recreational Area, Lā‘ie, O‘ahu through a public process. The process yielded a single bid which did not result in a development agreement and lease. State Parks believes at least part of the reason was that the imposition of certain infrastructure requirements and the requirement of an Environmental Impact Statement (EIS) may have discouraged bidders.

The Subject Property is currently being operated under a month-to-month revocable permit issued to Lanihuli Community Development Corporation (LCDC) who has occupied the property since 1994 under a series of revocable permits and operates the property as a commercial campground. On January 27, 2012, the BLNR authorized the issuance of this Request for Qualifications/Request for Proposals (hereinafter “RFP/RFQ”).

The purpose of this RFQ/RFP is to select a lessee for the Subject Property for commercial campground purposes.

SUBJECT PROPERTY.

The Subject Property consists of nineteen (19) contiguous parcels totalling approximately 36.288 acres in the Ko‘olauloa district, O‘ahu, Hawaii. This includes the area currently under a revocable permit to LCDC as well as two additional parcels including a residence currently used by DOCARE and an adjacent parcel which contains a parking lot, comfort station and beach access. The Subject Property is identified as Tax Map Key (TMK: (1) 5-6-001: Parcels 24, 45-47, 49, 51, 53-65 consisting of 19 separate but contiguous parcels comprising approximately 36.288 acres, hereinafter referred to as the "Subject Property". The tax map plat is attached as Attachment 1.

The Subject Property is within the State Land Use Commission’s Urban District and under the City and County of Honolulu’s (“City”) zoning code as R-5¹. The Subject Property has good access and exposure due to its frontage along Kamemehameha Highway and is close in proximity to the towns of Lā‘ie and Kahuku.

Seventeen of the nineteen parcels comprising the Subject Property are currently subject to a month-to-month revocable permit issued to LCDC. Between the parcels under the revocable permit to LCDC and the two additional parcels, there are a total of ten (10) structures including: one (1) caretaker’s residence, one (1) security guard’s residence, one (1) office, five (5) rental cabins, one (1) additional residence and one (1) existing comfort station.

---

¹. No change in county zoning is required for the Subject Property to be leased and operated for the purposes described herein and to continue to operate as a state park.
EXISTING RENTAL CABINS NOT INCLUDED IN THIS OFFERING

State Parks has contracted with Erskine Architects, Inc. to prepare an assessment report regarding the condition of certain State owned structures on the Subject Property. The report is one of several items contained in the Document Library which is available online. An index of the items contained in the Document Library is part of this RFQ/RFP as Attachment 2. The “Preliminary Findings & Recommendations Report” (the “Assessment Report”) is listed in the Document Library Index as Item 6. The Assessment Report covers each of the five (5) rental cabins and the DOCARE residence and indicates that the condition of all of the structures is poor and that certain cabins contained hazardous materials. Based on this and other information, with the exceptions listed below, all of the rental cabin structures, the DOCARE cabin, the office and security residence will not be included in this offering for use. State Parks has secured the structures and they may not be used for any purpose whatsoever. At State Parks’ sole discretion and timing, the structures will be demolished and removed from the Subject Property as funding, procurement and regulatory requirements are met. The only structures included for use with this offering are:

1. The existing comfort station (restroom) at the southern end of the Subject Property on Parcel 53; and,

2. The Manager’s Residence (except for the extension portion temporarily attached by LCDC) on Parcel 64.

All other structures will either be demolished by DLNR or are the property of LCDC and will be removed prior to the commencement of the lease.

TERM OF THE LEASE AND LONGER TERM FUTURE RFQ/RFP PLANS

This RFQ/RFP is for a lease with a term of five (5) years. During this time period, State Parks will make certain infrastructure improvements including waterline improvements and the construction of a new comfort station. Bidders should not rely on these improvements being available during the term of the lease. In addition, State Parks plans to develop architectural standards for the construction of new rental cabins and is considering constructing a single prototypical cabin. At the completion of the lease term under this offering, State Parks plans to seek BLNR approval for an entirely separate, significantly longer term request for qualifications/request for proposals process for a new lease which will allow a lessee to construct the planned permanent cabins and operate them for a time period sufficient to make the investment more feasible.

COMMENCEMENT DATE OF LEASE

In Section I “Significant Dates and Deadlines”, an tentative commencement date is listed. This date is an estimate. In addition to the other conditions and requirements of this RFQ/RFP, the commencement date of the lease is dependent upon the following:

1. The termination of the existing revocable permit issued to LCDC; and,
2. The removal of all personal property and improvements belonging to LCDC and restoration of the land by LCDC to the satisfaction of DLNR. However, if there is an agreement between the Selected Bidder and LCDC as to the sale of any personal property or improvements to the Selected Bidder, the personal property or improvements may remain on the land provided that the agreement between the Selected Bidder and LCDC is approved by the BLNR.

A copy of the LCDC revocable permit is available online in the Document Library (See Attachment 2).

**BOARD OF LAND AND NATURAL RESOURCES’ AUTHORITY.**

At its meeting on January 27, 2012, under Agenda Item E-2, the Board of Land and Natural Resources ("BLNR") authorized the issuance of a request for qualifications/request for proposals ("RFQ/RFP") to solicit proposals from Applicants interested in leasing the Subject Property. A copy of the submittal is included in the Document Library Index (See Attachment 2 Item 4).

**CHAPTERS 171 AND 343, HAWAII REVISED STATUTES.**

The Subject Property consists of “public lands” and is subject to the provisions of Chapters 171 and 343 of the Hawaii Revised Statutes “HRS”, as amended. This offering is not intended to expand the use or capacity of the Subject Property beyond the use that previously existed and is therefore exempt from the preparation of an environmental assessment. Further, no expansion beyond the current use is authorized in this offering.

**AUTHORIZATION FOR USE OF TEMPORARY STRUCTURES.**

No new construction is authorized and any expansion beyond the current levels of use is not permitted. Since the rental cabins are to be demolished and no longer used, temporary, portable structures may be used instead of the cabins provided the total area (under roof) and the total number of overnight occupants do not exceed the limits indicated in Section I (Campground Site Plan) and further provided the existing cesspools are no longer used. Use of the existing cesspools as seepage pits however, may be allowed with State Parks, DOH and other governmental approvals as applicable.

**CONDITION OF SUBJECT PROPERTY.**

The Subject Property shall be leased in its “as is” condition. DLNR makes no representations regarding the condition of the Subject Property or its suitability for any uses that may be proposed by Applicant. Applicants shall, at their sole expense, be responsible for conducting their own investigations and due diligence regarding the Subject Property.

The existing wastewater infrastructure is limited. Bidders should understand that the only permitted wastewater system on the Subject Property, other than the cesspool connected to the existing Manager's Residence, is associated with the comfort station identified on the map as “Existing Restroom” on parcel 53. Other existing temporary wastewater systems, both black and gray water systems, are the property of LCDC and are not included with this offering. It will be the successful bidder’s responsibility to provide portable toilets or similar systems to augment the existing comfort station to satisfy the needs for park activities and campground use. State
Parks has provided the DOH an affirmative action plan to provide for a transition from past violations regarding the use of what were considered to be large capacity cesspools. Those violations have ceased and the affirmative action timeline provides a plan for the transition to a new waste water system including a new comfort station and associated individual waste water system. The affirmative action timeline allows for the use of portable toilets during the transition and it is imperative that no future violations occur. If the selected bidder seeks to have a particular system permitted, approval from both State Parks and the DOH is required. The use of an unauthorized system will constitute a material breach of the lease agreement and could subject both the lessee and the State to fines, enforcement action and/or the termination of the lease.

The selected bidder will not be required to make any waste water improvements, but will need to augment the existing systems with portable toilets or other approved temporary systems during the term of the lease. The portable toilets must meet minimum DOH/NSA requirements and be professionally serviced.

To serve the future wastewater demand for day users, tent camping and temporary structure uses, State Parks is engaged in the process of constructing a new comfort station on the Subject Property at no cost or expense to the lessee. Pursuant to Chapter 343 HRS regarding environmental impact statements, State Parks will complete all associated requirements for the design, permitting and construction for said comfort station which is expected to require an Environmental Assessment and may require a significant amount of time. Bidders should not rely on this additional comfort station being operable during the term of the lease. Although State Parks makes no representation that this comfort station will be available for use during the term of the lease, it will endeavor to complete the design, permitting process and construction as commercially feasible. If the comfort station is fully complete and approved for use by the DOH during the term of the lease, the lessee may use this system without any additional cost or expense, and if said system is available, the lessee may reduce the use of portable toilets accordingly. Portable toilets must be NSA approved and must be professionally serviced by a licensed, authorized service provider approved by the DOH in accordance with DOH and EPA regulation.

**CAMPGROUND SITE PLAN**

Attachment 4 indicates the authorized locations for tent camping and temporary structures. Bidders may design the layout and use of these locations at their discretion subject to the terms and conditions below.

The ratio of areas designated for tent camping (in terms of total person capacity) to temporary structure camping (also in terms of total person capacity) shall be at least 50 percent. In addition, the maximum capacity both in terms of number of overnight guests and square footage for temporary structure use is limited to no greater than 196 people and no greater than 15,425 sf. The total maximum overnight guests, including both tent camping and temporary structure use shall not exceed 400. Further, no single structure shall be greater than 500 sf in area. The Bidder may determine the size, type and total number of temporary structures so long as they fit within these parameters and further subject to the following:

---

5 The Affirmative Action Timeline is available online and is listed in the Document Library Index in Attachment 2 as Item 8.
6 Except for utilities, maintenance and other related operating costs.
1. Temporary structures may not be permanently affixed to the ground;7
2. Any electrical systems or connections are subject to building permit requirements.
3. Plumbing gray and black water waste systems require State Parks and DOH approval and must be connected to a DOH approved wastewater system (i.e. holding tanks), otherwise, portable toilet systems must be used; and,
4. Temporary structures may not be placed seaward of the shoreline setback.

The type of temporary structures may include tent cabins, yurts, and other temporary forms of shelter provided they are not permanently affixed to the ground and they do not require ground disturbance. Any use of plumbing fixtures will require connection to DOH approved holding tanks or other approved systems. Both temporary shelter structures and black water systems requiring ground disturbance are not allowed.

COMFORT STATION IMPROVEMENTS

The primary purpose of the future comfort station is to accommodate the wastewater and bathing shower needs for day users, tent camping, and portable, temporary structures. Construction of the comfort station is planned to be completed on or about July 30, 2015, although the exact date is not known. In addition, improvements are planned for the existing water supply system. Water system improvements will be made at the State’s expense and bidders should not rely on the systems being available during the term of the lease. If the water system improvements are available for use, State Parks will endeavor to make them available to the extent commercially feasible during the term of the lease.

Staff anticipates that as a result of the Environmental Assessment process required under Chapter 343 HRS (regarding environmental impact statements), with respect to the construction of the comfort station, the capacity of maximum number of overnight users of the park is estimated to be approximately 400 persons based on the current capacity. That amount is based on estimates of historical use and the capacity of the existing structures and the improvements (including the existing comfort station).

DOCUMENT LIBRARY

Although not intended to be a complete compilation of all pertinent documents, DLNR has assembled various documents and information regarding the Subject Property which are available for review at the DLNR State Parks Oahu District Office at 1151 Punchbowl Street, Room 310, Honolulu, Hawaii 96813. These documents are also available online at http://dlnr.hawaii.gov/dsp/rfp/2014-Malaekahana. An index of the documents available for review is provided as Attachment 2. By request, neighbor island and out-of-state Applicants may arrange to view the documents and information by contacting the DLNR State Parks Oahu District Office at (808) 587-0505. DLNR makes no representations or warranties regarding the completeness or accuracy of any information contained in such documents. Applicants may request copies of any of the documents; provided, however, that DLNR may charge a fee for photocopying. The documents are government records and may be freely photographed.

7 Unless an exception is granted and any exceptions are subject to the discretion of State Parks and other applicable regulation.
APPLICATION, NOTICE OF INTENT AND STATEMENT OF QUALIFICATIONS.

To participate in this RFQ/RFP, all interested parties are required to first submit a completed Application and Notice of Intent by the stated deadline (see "Significant Dates and Deadlines" in this section). Completed Applications and Notices of Intent may be submitted to any of the State Parks’ District Offices (see last page of Section I) or by facsimile to (808) 587-0311. Any party that fails to submit a completed Application and Notice of Intent by the stated deadline shall not be allowed to participate in this RFQ/RFP process, and therefore cannot be considered in the selection process.

RFQ/RFP SOLICITATION AND SELECTION PROCESS.

After submittal of the Application and Notice of Intent by the stated deadline, Applicants will be eligible to participate in this RFQ/RFP process. The following is a general description of the two-step RFQ/RFP process. Detailed explanations of the RFQ and RFP processes are provided in Sections III, IV and V of this RFQ/RFP.

Phase 1: Request for Qualifications (RFQ). The RFQ will request Applicants to submit a statement of qualifications ("SOQ") along with a general description of their proposed plans for the Subject Property. The SOQ shall detail the Applicants’ relevant experience, financial capabilities, and management expertise. DLNR and an Evaluation Committee comprised of members determined by the Chairperson of the DLNR (hereinafter the "EC"), will review the SOQs and determine which Applicants meet the RFQ criteria and are eligible to participate in the RFP process. DLNR may also, but shall not be required to, form a short list of Applicants whose SOQs best meet the RFQ criteria. Eligible Applicants will be invited to participate in the RFP process.

Step 2: Request for Proposals (RFP). The RFP process will solicit detailed proposals for the Subject Property from eligible Applicants invited to participate. The EC will review the proposals and determine the Applicant whose proposal best meets the RFP objectives and RFP selection criteria. Pursuant to its role as approved by the BLNR, the EC has developed evaluation criteria and a scoring system. The scoring system rates each criterion and assigns a score and weight. The score multiplied by the weight will determine that criterion’s score. The total score is determined by adding the scores for each criterion and points, if any, for presentation and/or pre-award discussions. The bidder with the highest total score as determined by the EC will be recommended to the Chairperson for approval. In the event two or more bidders submit proposals that result in the same total score, the bidders will submit a revised proposal as to rent only and the recommendation to the Chairperson will be made according to the bid having the highest total rental amount. No other changes to the proposal will be considered or authorized.

APPROVAL OF LEASE AGREEMENT AND EXCLUSIVE NEGOTIATIONS PERIOD.

DLNR and the Selected Bidder will enter exclusive negotiations for a lease agreement. The lease agreement shall set forth the terms and conditions under which the selected bidder will perform, at its sole expense, all duties required to implement its operational concept for the Subject Property. A copy of the DLNR General Lease form is attached as Attachment 6, which will incorporate the specific terms and conditions unique to this lease.
The BLNR must approve the proposed terms and conditions of the proposed lease and may ask the Selected Bidder to agree to modifications of the terms and conditions before the proposed lease is executed. Any disapproval by the BLNR of the proposed lease will terminate the RFQ/RFP and will terminate any right the Selected Bidder or any other RFQ/RFP participant may have in regard to this RFQ/RFP or the proposed lease with no liability to DLNR or the BLNR whatsoever.

The exclusive negotiations phase will be for a period of six months. If the lease is not executed within six months of the date the Selected Bidder is notified it has been deemed the Selected Bidder, any rights the Selected Bidder has with respect to the lease and this RFQ/RFP shall terminate with no liability to DLNR or the BLNR whatsoever.

SIGNIFICANT DATES AND DEADLINES.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Advertisement of RFP</td>
<td>May 16, 2014</td>
</tr>
<tr>
<td>Site inspection</td>
<td>10:30 a.m., June 5, 2014</td>
</tr>
<tr>
<td>Deadline to Submit Application and Notice of Intent</td>
<td>4:00 p.m., June 19, 2014</td>
</tr>
<tr>
<td>Deadline to Submit Qualifications and General Plans</td>
<td>4:00 p.m., June 26, 2014</td>
</tr>
<tr>
<td>Deadline for submission of written questions</td>
<td>4:00 p.m., July 8, 2014</td>
</tr>
<tr>
<td>State Parks’ response to written questions posted</td>
<td>4:00 p.m., July 15, 2014</td>
</tr>
<tr>
<td>Notify Applicants of Eligibility to Submit RFP</td>
<td>July 23, 2014</td>
</tr>
<tr>
<td>Deadline to Submit Detailed Proposals</td>
<td>4:00 p.m. August 26, 2014</td>
</tr>
<tr>
<td>Selection of Successful Applicant *</td>
<td>September 16, 2014</td>
</tr>
<tr>
<td>Lease Commencement* **</td>
<td>(Tentatively) January 1, 2015</td>
</tr>
</tbody>
</table>

* Dates are subject to change by DLNR in its sole discretion.
** Subject to Board of Land and Natural Resources approval.

ISSUING OFFICE AND CONTACT PERSONS.

This RFQ/RFP is issued by DLNR, Division of State Parks. All communications with DLNR pertaining to this RFQ/RFP shall be directed to the DLNR Contact Persons named below. Any information provided to, or received from, anyone other than the Contact Persons shall not be relied upon in connection with this RFQ/RFP.

Curt Cottrell, Assistant Administrator
Stephen Soares, Property Manager
Department of Land and Natural Resources, Division of State Parks
1151 Punchbowl Street, Room 310
Honolulu, Hawaii  96813
Phone:  (808) 587-0505
Facsimile:  (808) 587-0455
REQUEST FOR CLARIFICATION.

Prospective Applicants may request clarification of any aspect of this RFQ/RFP in writing by mail or facsimile transmission to the DLNR contact persons above. Only DLNR’s written responses shall represent official answers and shall be made available for public review.

Verbal responses regarding this RFQ/RFP are intended as general guidance purposes only and may be provided at DLNR’s discretion. Any verbal response provided, however, shall not be interpreted as DLNR’s official answer or position.

CONFIDENTIAL INFORMATION.

If an Applicant believes that any portion of its proposal contains information that should be withheld as confidential, the Applicant shall notify DLNR in writing and provide justification for confidential status. The amount of any proposed fees or lease rents to be paid by the Applicant to DLNR are not deemed confidential and will not be withheld.

An Applicant shall request, in writing, nondisclosure of designated trade secrets or other proprietary data to be held as confidential. Such data shall accompany the Applicant’s proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the nonconfidential portion of the proposal.

DLNR shall consult with the Department of the Attorney General, and may also consult with the Office of Information Practices (“OIP”), to make any necessary determinations of confidentiality in accordance with Chapter 92F, HRS. If the Applicant’s request for confidentiality is denied, DLNR shall notify the Applicant and such information shall be disclosed as public information unless the Applicant appeals the denial to OIP in accordance with Section 92F-42(12), HRS.

DLNR STATE PARKS DISTRICT OFFICES.

Oahu State Parks District Office
1151 Punchbowl Street, Room 310
Honolulu, Oahu 96813

Maui State Parks District Office
54 S. High Street, Room 101
Wailuku, Maui 96793

Hawai‘i State Parks District Office
75 Aupuni Street, Room 204
Hilo, Hawai‘i 96720

Kauai State Parks District Office
3060 Eiwa Street, Room 306
Lihue, Kauai 96766
SECTION II. RFQ/RFP OBJECTIVES

DLNR's objectives for this RFQ/RFP are to select a prospective lessee for the Subject Property that:

- Has successfully developed and/or operated projects involving rental and/or campground facilities;
- Will put the Subject Property to a use in a manner consistent with DLNR’s mission and provide maximum public benefit and a quality outdoor recreation experience;
- Will provide the DLNR the maximum value on the Subject Property in a timely manner;
- Has the financial resources and/or ability to obtain the financing necessary to implement and operate its proposed project without being subsidized by DLNR; and
- Will operate its project under a lease arrangement with a term not to exceed 5 years and cooperate with DLNR while it implements the capital improvements including bathrooms/showers, waste water, waterline and other improvements.
INTRODUCTION.

DLNR is seeking a prospective lessee that possesses the experience, expertise, and financial capacity to utilize/develop the Subject Property in a manner that best satisfies the RFQ/RFP Objectives and RFP Selection Criteria.

The purpose of this RFQ is to solicit statements of qualifications (“SOQ”) from prospective lessees. DLNR's and the EC’s review and evaluation of the SOQs are intended to ensure the selected Applicant possesses the necessary experience, expertise and financial capacity.

Applicants shall be responsible for all risks, costs, and expenses in connection with the preparation of their respective SOQs. Applicants shall also be responsible for any and all pre-development, planning, and due diligence costs incurred by the Applicant. DLNR assumes no risks or costs associated with any Applicant’s participation in this RFQ.

APPLICATION AND NOTICE OF INTENT.

Any party interested in participating in this RFQ/RFP must submit a completed Application and Notice of Intent (see Page iv of this RFQ/RFP) to DLNR by the deadline indicated in Section I (see “Significant Dates and Deadlines”). Any party that fails to submit a completed Application and Notice of Intent by the required deadline shall not be eligible to submit their SOQ and shall not be allowed to participate in this RFQ/RFP. The addresses of DLNR's State Parks District Offices are provided in Section I above.

STATEMENT OF QUALIFICATIONS/ GENERAL PLANS - SUBMITTAL REQUIREMENTS.

Each Applicant shall submit five (5) hard copies and one (1) electronic copy on a CD or DVD of their SOQ by the deadline specified in Section I (see "Significant Dates and Deadlines").

The SOQ shall contain the following information and materials organized in a manner that is consistent with the headings and sequence presented below.

1. **Cover Letter.** Submit a cover letter on the Applicant’s letterhead addressed to DLNR and signed by an authorized representative of the Applicant.

2. **Proposed Conceptual Plan for the Subject Property.** Generally describe the Applicant’s proposed campground plans for the Subject Property, including but not limited to general descriptions of campsite areas and a description of the temporary structures planned, if any, and estimated costs.

   The purpose of this requirement is to allow DLNR and the EC to evaluate and determine whether the Applicant possesses the experience, expertise and financial capacity to successfully implement and manage the Applicant’s plans.

3. **Applicant – Type of Entity and Ownership Interests.** Provide the following Applicant information:

   a. **Name.** The legal name of the Applicant.
b. **Type of Entity.** Identify the type of entity (e.g., corporation, limited liability company, etc.), and the state or country of organization.

c. **Owners.** Identify the individuals or entities holding a 10% or more ownership interest in the Applicant and their respective ownership interests. Provide additional background information on any of the owners that supports the Applicant's ability to successfully implement and manage the Subject Property as generally described/proposed, including descriptions of key roles that these individuals or entities will play in the Applicant's use of the Subject Property.

d. **Directors/Officers.** Identify the directors and officers of the Applicant, including names and titles. Provide additional background information on any of the directors and officers that support the Applicant's ability to successfully implement and manage the Subject Property as generally described/proposed, including descriptions of key roles that these individuals will play in the Applicant's proposed use of the Subject Property.

**IMPORTANT:** The Applicant shall be the entity that will enter into the lease agreement with DLNR. No assignment(s) will be permitted.

4. **Organization.** Describe the Applicant's organization, if applicable, including the role and responsibilities of each member, major consultants (e.g., architect, planners, etc), joint venture and/or limited partners. Include any members that may be added in the future to fund, implement or manage the Applicant's proposed project. Describe any arrangement or commitment between the Applicant and the potential future members.

5. **Experience.** For each member of the Applicant, describe previous experience with projects/uses similar in type, size, and/or scope to the Applicant’s proposed project/use for the Subject Property. For each such project/use, provide the following:

   a. **Project Description.** Describe the project, including location, address, project size, land uses, facilities, commencement and completion dates, etc.

   b. **Roles/Responsibilities.** Describe the role(s) of each Applicant/team member with respect to the project. Describe roles in planning, managing and operating campground, campsite, cabin or similar rental experience including the ability to obtain governmental approvals.

   c. **Cost/Financing.** Provide total project costs and describe the financing/funding, including the source, amount, and current status.

   d. **Timely Completion.** Describe whether or not prior projects were completed/delivered in a timely manner and within budget (e.g., on time, ahead of schedule, over/under budget, etc.).

   e. **Current Status.** Describe the current status of the project, including (if applicable) the team's involvement with the project; current ownership and management of the project; and current uses, occupancy rates, operating revenues, profits/losses, etc.
6. **Other Applicable Experience.** Describe any other experience that may support the Applicant's ability to successfully implement and manage the Subject Property as generally described/proposed. Describe any past or current lease(s) of government-owned lands awarded to the Applicant, Applicant's owners, directors and/or officers, including any delinquencies or prior defaults on any such lease(s).

7. **Financial Capacity and Credit History.** Provide evidence of the Applicant's financial ability to implement the Applicant's project(s) on the Subject Property as generally described/proposed. Such evidence should include Applicant's past or current debt or equity financing (e.g., letters from past or current lenders or financing sources confirming the amounts financed, repayment terms, and repayment status), Applicant's financial statements for the past three fiscal years, current credit report(s), and evidence of any capital resources or financing commitments. Attach a Dun & Bradstreet credit report for the Applicant issued within 90 days of the advertisement date of this RFQ/RFP (see “Significant Dates and Deadlines”).

   Describe any loan or lease defaults, bankruptcies, judgments, or any litigation or other disputes that may potentially have an adverse effect on the Applicant's current financial capability.

8. **Other Information.** Provide any other information regarding the Applicant, its team or its members that may be pertinent in establishing the Applicant’s ability to implement the Applicant’s project/uses(s) on the Subject Property as generally described/proposed.

9. **References.** Provide references (including names, titles, addresses, phone numbers) whom DLNR may contact to confirm the Applicant/team members' experience, or any information provided in the SOQ response to this RFQ.
STATEMENT OF QUALIFICATIONS - SUBMITTAL DEADLINE.

SOQs must be submitted to one of DLNR's State Parks' District Offices by the deadline indicated in Section I (see “Significant Dates and Deadlines”). Except for additional information requested by DLNR, any information submitted after this deadline, including any changes or modifications to the SOQ, will not be considered. The addresses of DLNR's State Parks’ District Offices are provided in Section I above.

RFQ EVALUATION PROCESS.

1. Preliminary Review. DLNR staff will conduct a preliminary review of the SOQs for adequacy and completeness. If any SOQ is incomplete, DLNR staff may, in their sole discretion, disqualify the Applicant and its SOQ from further review and consideration. DLNR, however, reserves the right to waive any defects in any SOQ and may permit the timely correction of errors contained therein. DLNR may also request an Applicant to provide clarification or additional information/materials to assist DLNR, or the EC, in its review/evaluation of the Applicant’s SOQ.

2. Substantive Review. SOQs that are determined to be adequate and complete during the preliminary review shall thereafter undergo a substantive review by the Evaluation Committee selected by the Chairperson.

DLNR or its EC may ask any Applicant to provide additional information and/or materials to assist in the substantive review of the Applicant’s SOQ. The Evaluation Committee may also interview any Applicant or Applicant members.

The Evaluation Committee will review the SOQs and determine which Applicants meet the RFQ selection criteria as explained in Section V and are eligible to submit proposals. The evaluation committee may also, at its sole discretion, form a short list of the "most qualified" Applicants. The eligible Applicants (or short list of the "most qualified" Applicants, if applicable), will then be invited to participate in the RFP process.

If the Evaluation Committee finds that only one Applicant meets the RFQ criteria, the Chairperson may, in his sole discretion, waive any steps of the RFP phase of this RFQ/RFP process.
SECTION IV. REQUEST FOR PROPOSALS (“RFP”)

INTRODUCTION.

DLNR will invite eligible Applicants (or the short list of the "most qualified" Applicants) to participate in the Request for Proposals ("RFP") process, (hereinafter called “Bidders”). The EC will evaluate the submitted proposals and recommend to the Chairperson the Bidder whose proposal achieved the highest score pursuant to Section V. The Chairperson shall then select the Bidder in his sole and absolute discretion based on his determination of whether the Bidder meets the objectives and criteria of the RFP. Once the Chairperson has selected the Bidder (the “Selected Bidder”), the Selected Bidder shall then commence exclusive negotiations with DLNR for a lease agreement for the Subject Property (see Section VI for additional details regarding the lease agreement).

Bidders participating in this RFP will be responsible for all risks, costs, and expenses in connection with the preparation of their respective proposals submitted in response to this RFP. DLNR assumes no risks or costs associated with any Bidder’s participation in this RFP.

RFP SUBMITTAL REQUIREMENTS.

Only Bidders invited to do so may submit a proposal. Submitted proposals shall include the information and materials described below and be organized in a manner that is consistent with the headings and sequence presented below. Bidders shall each submit seven (7) hard copies and one (1) electronic copy on a CD or DVD of their proposals.

1. Cover Letter. Submit a cover letter on the Bidder’s letterhead addressed to DLNR and signed by an authorized representative of the Bidder.

2. Earnest Money Deposit. Bidders shall, together with their proposal, remit an earnest money deposit in an amount of ONE THOUSAND DOLLARS ($1,000.00) by cashier’s check or money order, made payable to the Department of Land and Natural Resources.

Earnest money deposits shall be held uncashed by DLNR until the Selected Bidder has been determined by the Chairperson. Once determined by Chairperson, the earnest money deposit of the Selected Bidder shall be deposited with DLNR. All other deposits shall be returned to any Bidder not selected. If this RFQ/RFP is terminated prior to the Chairperson’s determination of the Selected Bidder, each Bidder’s deposit shall be returned.

If, after the Selected Bidder is determined by the Chairperson, the RFQ/RFP is terminated by DLNR and the termination is not due to the actions or inaction of the Selected Bidder, the earnest money deposit shall be returned to the Selected Bidder in full. If the lease is executed, the Selected Bidder’s earnest money deposit will be applied toward amounts owing under the lease.


4. Project Plan. Provide Bidder’s project plan for the Subject Property, which shall include the following as may be applicable:
a. **Site Plan.** Provide a site plan of the proposed project showing the location, configuration, approximate sizing, and planned uses including the type and approximate location of temporary structures and tent camping areas.

b. **Narrative Description.** Provide a narrative description of the proposed project. The narrative description should include, but not be limited to the following, as may be applicable:

- Descriptions of the proposed project including key elements, and implementation timing;
- Statements indicating how the proposed project satisfies the RFQ/RFP objectives;
- Descriptions of proposed phasing plans, if any, including estimated time periods for each phase;
- Any other pertinent information regarding the Bidder's proposal.

c. **Temporary Shelter Plans.** Provide any proposed design standards for the project that describe the type of structures to be used, and other design features such as architecture or design, lighting, landscaping, etc.

d. **Illustrations & Other Information.** Provide any other information, plans, illustrations, and/or renderings that would assist DLNR and the EC in visualizing the proposed project.

e. **Changes/differences from Response to RFQ.** If the proposed design is substantially different from what was generally described in response to the RFQ portion of this RFQ/RFP, the Bidder must provide an explanation for those differences. Moreover, if the proposed uses require qualifications other than or in addition to what was provided by the Bidder in response to the RFQ, the Bidder shall provide additional information to evidence the Bidder’s qualifications (e.g., experience and expertise) relevant to the revised proposal. The information to be provided shall be similar to the type and level of detail provided in response to the RFQ.

   If the Evaluation Committee determines that the Bidder does not possess the necessary experience with respect to such revised/modified project, the EC may recommend to the Chairperson that the Bidder be disqualified from further consideration, and the Chairperson may disqualify the Bidder or may take such factors into consideration in evaluating the Bidder’s proposal.

5. **Economic Proposal.** Provide a feasible economic proposal appropriate for the Bidder's proposal. At a minimum, the economic proposal shall include the following:

   a. **Lease Rent.** Provide the proposed lease rent structure during the term of the lease, including the minimum monthly base and percentage rents payable monthly and any free rent periods. The free rent period may not exceed three (3) months. The format of the lease rent offer must include a fixed minimum monthly base rent (hereinafter the “Minimum Monthly Rent”) and a percentage of gross receipts rent, whichever is greater. Any lease rents proposed by the Bidder must provide a Minimum Monthly Rent of at least $2,500 per month and a percentage rent of at least 7
percent of gross receipts with no more than three (3) months of free base and/or percentage rent. Any proposal offering less than these minimums will be considered unresponsive.

6. Business Plan. Provide the Bidder’s business plan for the proposed project. The business plan shall specify all of the major elements necessary to implement the Bidder’s proposed project. The business plan should include but shall not be limited to the following, as may be applicable:

   a. Project Schedule. Provide an outline of the proposed project schedule and indicate when the campground would be operational.
   b. Project Cost Estimates. Provide cost estimates for the entire project, including estimate breakdowns for each phase of the project, if any
   c. Financial Pro Forma. Provide financial pro forma projections for the entire project. The pro forma statements should also be broken down for each phase of the project, if any. Pro forma projections should also clearly show gross revenues, operating expenses, vacancies allowances, reserves, debt service, net operating income and profits.
   d. Financing Strategy. Describe the proposed financing plan for the project.
   e. Marketing and Operating Plan. Provide a marketing and operating plan that shows how the Bidder intends to implement the proposed project.
   h. Roles and Responsibilities of Key Players. Explain the Bidder’s and key managers’ role in management of the project.
   i. Camping and Temp Structure Rates. Explain and list the nightly and other rates planned for all accommodation types.

RFP SUBMITTAL DEADLINE.

RFP submittals must be submitted to one of the DLNR State Parks’ District Offices by the RFP submittal deadline indicated in Section I (see “Significant Dates and Deadlines”); provided, however, that the deadline is subject to extension with notice to all Bidders. The addresses of DLNR’s State Parks’ District Offices are provided in Section I above. Except for additional information that may be requested by DLNR, information submitted after the submittal deadline will not be considered.

RFP EVALUATION PROCESS.

1. Preliminary Review. Upon receipt of a development proposal, DLNR staff will conduct a preliminary review of the submitted information for adequacy and completeness. If the submitted proposal is incomplete or does not include the required earnest money deposit, DLNR staff may, in its sole discretion, disqualify the Bidder from further consideration. DLNR, however, reserves the right to waive any defects in any response, or permit the timely correction of errors contained in a proposal that otherwise meet the RFP requirements.

12 Bidders may bid for percentage rents only in increments of whole percentages or tenths of percentages, e.g. 7.4% or 8.3% but may not bid in smaller increments such as hundredths of a percentage, e.g. 7.01% or 8.0325%.

Page 24 of 68
2. **Substantive Review.** Proposals determined to be adequate and complete shall undergo a substantive review and evaluation by the Evaluation Committee made up of members selected by the Chairperson. DLNR reserves the right to select an RFP Evaluation Committee that consists of members different from those of the RFQ Evaluation Committee.

DLNR or the Evaluation Committee may ask any Bidder for further clarification of the information submitted, or for additional information/materials to assist the Evaluation Committee in its review/evaluation of the Bidder’s proposal. Bidders may also be required to make an oral presentation of their respective proposals to DLNR, the Evaluation Committee and/or the BLNR.

The Evaluation Committee shall assess which proposal best satisfies the RFQ/RFP objectives and RFP selection criteria below, and the Evaluation Committee shall recommend that Bidder to the Chairperson for approval.

3. **Approval of Bidder.** The recommended Bidder is subject to the Chairperson’s approval. The Chairperson shall make the final decision as to whether the recommended Bidder meets the RFQ/RFP objectives and selection criteria. If the Chairperson does not approve the Bidder recommended by the Evaluation Committee, the Chairperson, in his sole discretion, may: (i) request that the Evaluation Committee make a recommendation from the remaining proposals; or (ii) terminate the RFQ/RFP.
SECTION V. CRITERIA FOR SELECTION

The selection criteria to determine the successful bidder is based on a multi-phased evaluation process. The process includes the Request for Qualifications (RFQ) phase and the Request for Proposals (RFP) phase. The Applicant receiving a passing score under the RFQ phase and who is deemed to have been qualified, and who participates and receives the highest score in the RFP phase, subject to the terms below, will be recommended to the Chairperson for approval.

RFQ Criteria

In the RFQ or qualifications phase, staff and the EC will review the SOQ and a determination will be made as to whether or not the Applicant is deemed qualified based on the following criteria.

1. The Applicant demonstrates experience and expertise with developing, establishing or managing transient or other rental property similar to the Applicant’s proposed use(s) for the Subject Property (including experience in obtaining government approvals/permits, or any other applicable real estate construction, management and/or development experience/ expertise)\(^{16}\). Scoring range 1-5; Weight (30)

2. The Applicant’s conceptual plan demonstrates sensitivity and knowledge of the concerns expressed by Kahuku residents indicating a preference for the preservation of open space and access to both the park and the shoreline for individual and group activities. Scoring range 1-5; Weight (30)

3. The Applicant possesses the financial capacity, creditworthiness, and ability to secure funding and/or financing necessary to implement its project/use(s) proposed for the Subject Property. Scoring range 1-5; Weight (20)

4. Overall feasibility. The ability to implement and follow-through with the vision presented in the general plan. Scoring range 1-5; Weight (20)

The scores for each Applicant based on the four criteria listed above will be compiled using the form set forth in Attachment 5 - Evaluation Scoring Sheet – Sample RFQ Evaluation (the “Sample RFQ Form”). The Sample RFQ Form indicates the theoretical highest score for each criterion and the total score. The sample scores will be deleted from the form and the EC members will each complete one form for each Applicant assigning a score from 1 to 5 for each criterion. The EC shall use the weights listed above for each criterion. The score times the weight equals the criterion’s score. The scores for all criteria will be tallied and a total score given for each Applicant. The scores given by the EC members will be averaged to calculate an Applicant’s final score. In order to be deemed a qualified bidder and proceed to the RFP phase, an Applicant must comply with the submittal requirements in Section III of this RFQ/RFP and must achieve a passing total score of at least 75 points. Applicants who fail to meet the requirements of this RFQ process will be notified of such failure in writing and will not be eligible to participate in the RFP phase. Applicants who are deemed qualified will be notified in writing as well and may proceed to the RFP phase.

\(^{16}\) Applicant need not have direct experience in campground development or operation per se, but must possess experience with rental property at a minimum.
REVIEW AND APPEAL RIGHTS.

DLNR will notify each Applicant, in writing, of the EC’s determination as to whether an Applicant meets the RFQ criteria. Pursuant to Section 171-59(a)(3), Hawaii Revised Statutes, any Applicant may examine the basis of the Evaluation Committee's determination to ascertain whether or not the conditions and criteria were followed; provided that if any Applicant does not notify the Chairperson of the Applicant's objections, and the grounds therefore, in writing, within twenty (20) days of the receipt of the notice, the Applicant shall be barred from proceeding to seek legal remedy for any alleged failure of the Evaluation Committee, State Parks, the Chairperson, DLNR, or BLNR to follow the conditions and criteria.

The Applicant's objections shall include a written statement detailing the reasons why the Applicant believes its submitted SOQ satisfies the RFQ criteria. The Chairperson's reconsideration of an Applicant's eligibility shall be limited to the information contained in the SOQ submitted and no new information, presented either verbally or in writing, shall be considered.

RFP Criteria

The RFQ phase will be followed by the RFP phase and only Applicants who qualify as Bidders may participate in this phase. Staff and the EC will review the Bidder's proposal in accordance with Section IV of this RFQ/RFP. Following staff's preliminary review, the EC will evaluate each proposal based on the following criteria:

1. The Project Plan is well-organized and provides a timely project schedule, a financially feasible project, and a viable financing strategy given the limited term of the lease (5 years). Scoring range 1-5; Weight (20)
2. The Bidder’s plan identifies a sense of place. This entails both a management style and sensitivity to the needs of both local resident and visitors with a quality that blends and reflects both the natural, cultural and historical elements of Malaekahana. This approach should both complement and be well integrated within this coastal campground and the surrounding community with quality management of public tent camping and temporary alternative accommodations. Scoring range 1-5; Weight (20)
3. The Bidder’s proposal demonstrates the flexibility to work in a collaborative and compliant manner, with State Parks during the 5 year capital improvement phase so that the improvements can be made while minimizing the negative impacts on campers and other park users. Scoring range 1-5; Weight (20)
4. Will provide the DLNR the maximum financial return on the Subject Property in a timely manner; Scoring range 1-5; Weight (20)
5. The Bidder’s proposal complies with the requirements of this RFQ/RFP. Scoring range 1-5; Weight (10)
6. Presentation and pre-award discussions, if any. Scoring range – up to 10 points total.

The scores for each Bidder, based on the above RFP criteria will be totaled using a form set forth in Attachment 5 - Evaluation Scoring Sheet – Sample RFP Evaluation (the “Sample RFP Form”). The Sample RFP Form indicates the theoretical highest score for each criterion.
and the total score. The sample scores will be deleted from the form and the EC members will each complete one form for each Bidder and assign a score ranging from 1 to 5 for each criterion. The EC shall use the weights and points described above for each criterion and assign a score for each criterion. The scores will be tallied and a total score given for each Bidder. The EC shall recommend approval of the Bidder with the highest total score to the Chairperson. The Chairperson, in his sole and absolute discretion, will conclusively decide whether the recommended Bidder meets the RFQ/RFP objectives and selection criteria. The Chairperson may select the next highest scorer until he is satisfied that a Bidder meets the objectives and criteria. If no Bidder is approved by the Chairperson, no lease will be issued. A bidder approved by the Chairperson will be the Selected Bidder and will proceed with exclusive negotiations for a lease.

Event of a Tie in Total Score

In the event two or more Bidders receive identical highest total RFP scores, they will be notified in writing as to the tie. The tied Bidders shall submit a sealed revised proposal within twenty (20) days of notice of the tie. Notice shall be effective on the date of its mailing to a Bidder’s business address. The only change authorized in the revised proposal will be a bid as to minimum monthly and percentage rent as stated in Section IV, RFP Submittal Requirements 5(a). No other changes to the proposal will be authorized or considered.

Bidders shall submit and deliver a sealed revised proposal as follows:

Department of Land and Natural Resources, Division of State Parks
Malaekahana RFQ/RFP Sealed Bid Proposals
1151 Punchbowl Street, Room 310
Honolulu, Hawaii 96813

After the 20 day notice period has expired, the Bidder with the highest total rent shall be recommended to the Chairperson. The highest rent shall mean the total Minimum Monthly Rent for the term of the lease. If there is a tie in the tied Bidders’ Minimum Monthly Rent, the bid with the highest percentage rent shall be deemed the highest bid.

Objection to the Selection of Lessee

When a Bidder has been approved by the Chairperson, notice of the selection and the basis of selection shall be mailed to all Bidders at their respective business addresses. Pursuant to Section 171-59(a)(3) HRS, a Bidder may object in writing to the Chairperson as to the basis of the Selected Bidder’s selection and examine whether the conditions and criteria for selection were followed. A failure to object and set forth the grounds for the objection in writing within twenty (20) days of receipt of the notice shall bar any legal remedy.
SECTION VI. EXCLUSIVE NEGOTIATIONS / LEASE AGREEMENT

EXCLUSIVE NEGOTIATIONS.

DLNR and the Selected Bidder will enter into exclusive negotiations of a lease agreement. The lease agreement shall set forth the terms and conditions under which DLNR will make the Subject Property available to the Selected Bidder to pursue implementation of its proposal.

The exclusive negotiations will be for a period of up to six (6) months unless extended by the BLNR due to circumstances not caused by the action or inaction of the Selected Bidder. If a lease agreement is not approved by the BLNR and executed by the expiration of the exclusive negotiation period, all negotiation rights of the Selected Bidder shall terminate and DLNR shall retain the entire earnest money deposit, and no rights to negotiate any lease agreement shall accrue to the Selected Bidder or to any other Applicant or Bidder.

DLNR reserves the right to negotiate with the Selected Bidder any additional terms, conditions or modifications to the terms set forth in this RFQ/RFP, or to the Selected Bidder’s proposal, if it is in DLNR’s best interest to do so; provided, however, that any negotiated adjustments to any fees, payments or rents shall not result in such adjusted fees, payments or rents being less than fair market rents as may be determined or confirmed by an independent real estate appraiser, and not less than the amount(s) proposed in the Selected Bidder’s economic proposal.

The BLNR must approve the proposed terms and conditions of the proposed lease and may ask the Selected Bidder to agree to modifications of the terms and conditions before the proposed lease is executed. Any disapproval by the BLNR of the proposed lease will terminate the RFQ/RFP, and any right the Selected Bidder or any other RFQ/RFP participant may have in regard to this RFQ/RFP or the proposed lease will terminate with no liability to DLNR or the BLNR whatsoever.

LEASE AGREEMENT.

The executed lease agreement will allow the Selected Bidder (the “Lessee”) to perform, in accordance with applicable laws, all at its sole expense, any and any other duties that may be necessary to successfully implement the Selected Bidder’s proposal. No improvements or construction shall be allowed under the lease agreement without prior written approval by the BLNR. (See Attachment 6 for the DLNR General Lease Form)
SECTION VII. OTHER TERMS AND CONDITIONS

FEES AND COSTS.

The Selected Bidder shall pay all charges required by law and all costs incurred by DLNR in connection with the preparation and processing of this RFQ/RFP, which may include but shall not be limited to the cost of publication fees for this RFQ/RFP, conveyance taxes, recordation fees. The current estimate for advertising costs is approximately $900.00 and is subject to change. Payment is required prior to the execution of the lease.

TITLE TO PROPERTY.

The Subject Property is Section 5(a) land under the Hawaii Admissions Act. DLNR makes no warranty or representation to any Applicant, Bidder or Selected Bidder with respect to the status of title to the Subject Property.

DLNR DISCRETION AND RESERVATION OF RIGHTS; PROPOSALS NOT SELECTED.

DLNR reserves the right to: (1) amend this RFQ/RFP, including but not limited to extending deadlines and amending or waiving submittal requirements; (2) waive any proposals defects; (3) request from any Applicant, Bidder or Selected Bidder a clarification of any information submitted or additional information/materials to assist DLNR or DLNR’s Evaluation Committee in their review/evaluation of the Applicant’s/Bidder’s proposal; (4) request and/or approve amendments or modifications to the proposals, provided, however, any amendments or modifications shall not result in adjusted fees or rent being less than fair market rent as may be confirmed by staff or an independent real estate appraiser, or the amount(s) proposed in the Applicant’s/Bidder’s economic proposal; (5) reject any proposal that does not provide for DLNR to earn a fair market lease rent; (6) reject any and all proposals in whole or in part; (7) request new proposals from all Bidders; and/or (8) cancel this RFQ/RFP, all with no liability whatsoever, when it is in DLNR’s best interest to do so.

The information contained in this RFQ/RFP is believed to be reliable, but cannot be guaranteed.

Any and all information submitted in response to this RFQ/RFP by Applicants/Bidders not approved for exclusive negotiations of the lease shall be returned to the respective parties or made available for pickup by the Applicants/Bidders once the lease agreement is executed, unless DLNR determines, in its sole discretion, that it is in DLNR’s best interest to retain any or all such information.
Tax Map Key (Expanded View)
ATTACHMENT 2 – DOCUMENT LIBRARY

1. Governor’s Executive Order No. 3928 setting aside lands for park and recreational purposes.
2. State Parks Administrative Rules
3. Revocable Permit No. SP0406 issued to Lanihui Community Development Corporation
4. January 27, 2012 Submittal to the Board of Land and Natural Resources
6. Preliminary Findings & Recommendations Report
7. Segawa Plan (for background informational purposes)
8. Affirmative Action Timeline with the Department of Health/EPA
9. Rental Reports from Lanihuli Community Development Corporation (dates)
10. Past Water Invoices from the Board of Water Supply
11. Site Map
12. Structure Inventory

These documents may be found online at http://dlnr.hawaii.gov/dsp/rfp/2014-Malaekahana
ATTACHMENT 3 – SITE MAP
ATTACHMENT 4 – CAMPSITE AND TEMP STRUCTURE AREAS
## Evaluation Score Sheet – Sample RFQ Evaluation

<table>
<thead>
<tr>
<th>Qualification Criteria Sample Scoring of Maximum Score</th>
<th>2 Scoring Range</th>
<th>3 Weight</th>
<th>4 Evaluator Score</th>
<th>5 Criteria Weight</th>
<th>Weighted Score (4X5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 • The Applicant demonstrates experience and expertise with developing, establishing or managing transient or other rental property similar to the Applicant’s proposed use(s) for the Subject Property (including experience in obtaining government approvals/permits, or any other applicable real estate construction, management and/or development experience/expertise).</td>
<td>1-5</td>
<td>30</td>
<td>5</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>2 • The Applicant’s conceptual plan demonstrates sensitivity and knowledge of the concerns expressed by Kahuku residents indicating a preference for the preservation of open space and access to both the park and the shoreline for individual and group activities.</td>
<td>1-5</td>
<td>30</td>
<td>5</td>
<td>6</td>
<td>30</td>
</tr>
<tr>
<td>3 • The Applicant possesses the financial capacity, creditworthiness, and ability to secure funding and/or financing necessary to implement its project/use(s) proposed for the Subject Property.</td>
<td>1-5</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>4 • Overall feasibility. The ability to implement and follow-through with the vision presented in the general plan.</td>
<td>1-5</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>20</td>
</tr>
</tbody>
</table>

Total Score (Minimum Passing Score: 75) 100
### Proposal Criteria - [Sample Scoring of Theoretical Maximum Score]

<table>
<thead>
<tr>
<th>Proposal Criteria</th>
<th>2 Scoring Range</th>
<th>3 Weight</th>
<th>4 Evaluator Score</th>
<th>5 Criteria Weight</th>
<th>Weighted Score (4X5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 • The Project Plan is well-organized and provides a timely project schedule, a financially feasible project, and a viable financing strategy given the limited term of the lease (5 years).</td>
<td>1-5</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>2 • The Applicant’s plan identifies a sense of place. This entails both a management style and sensitivity to the needs of both local resident and visitors with a quality that blends and reflects both the natural, cultural and historical elements of Malaekahana. This approach should both complement and be well integrated within this coastal campground and the surrounding community with quality management of the public tent camping and temporary alternative accommodations.</td>
<td>1-5</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>3 • The Applicant’s proposal demonstrates the flexibility to work in a collaborative and compliant manner with State Parks during the 5 year capital improvement phase so that the improvements can be made while minimizing the negative impacts on campers and other park users.</td>
<td>1-5</td>
<td>20</td>
<td>5</td>
<td>4</td>
<td>20</td>
</tr>
<tr>
<td>4 • Will provide the DLNR the maximum financial return on the Subject Property in a timely manner;</td>
<td>1-5</td>
<td>10</td>
<td>5</td>
<td>2</td>
<td>20</td>
</tr>
<tr>
<td>5 • The Applicant’s proposal complies with the requirements of this RFQ/RFP.</td>
<td>1-5</td>
<td>10</td>
<td>5</td>
<td>2</td>
<td>10</td>
</tr>
</tbody>
</table>

Proposal Score: 90

Presentation and Pre-Award Discussions (max 10 points): 10

Total Score: 100
Attachment 6 - DLNR General Lease Form

STATE OF HAWAII

DEPARTMENT OF LAND AND NATURAL RESOURCES

GENERAL LEASE NO. ______

between

STATE OF HAWAII

and

covering
<table>
<thead>
<tr>
<th>TABLE OF CONTENTS</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TERM OF LEASE</td>
<td>1</td>
</tr>
<tr>
<td>ANNUAL RENTAL</td>
<td>1</td>
</tr>
<tr>
<td>REOPENING OF ANNUAL RENTAL</td>
<td>2</td>
</tr>
<tr>
<td>INTEREST RATE/SERVICE CHARGE</td>
<td>3</td>
</tr>
<tr>
<td>RESERVATIONS:</td>
<td></td>
</tr>
<tr>
<td>1. Minerals and waters</td>
<td>4</td>
</tr>
<tr>
<td>2. Ownership of improvements</td>
<td>4</td>
</tr>
<tr>
<td>AGREEMENTS AND COVENANTS BETWEEN PARTIES:</td>
<td></td>
</tr>
<tr>
<td>1. Payment of rent</td>
<td>5</td>
</tr>
<tr>
<td>2. Taxes, assessments, etc.</td>
<td>5</td>
</tr>
<tr>
<td>3. Utility services</td>
<td>5</td>
</tr>
<tr>
<td>4. Covenant against discrimination</td>
<td>5</td>
</tr>
<tr>
<td>5. Sanitation</td>
<td>5</td>
</tr>
<tr>
<td>6. Waste and unlawful, improper or offensive use of premises</td>
<td>5</td>
</tr>
<tr>
<td>7. Compliance with laws</td>
<td>6</td>
</tr>
<tr>
<td>8. Inspection of premises</td>
<td>6</td>
</tr>
<tr>
<td>9. Improvements</td>
<td>6</td>
</tr>
<tr>
<td>10. Repairs to improvements</td>
<td>6</td>
</tr>
<tr>
<td>11. Liens</td>
<td>6</td>
</tr>
<tr>
<td>12. Character of use</td>
<td>6</td>
</tr>
<tr>
<td>13. Assignments, etc.</td>
<td>6</td>
</tr>
<tr>
<td>14. Subletting</td>
<td>7</td>
</tr>
<tr>
<td>15. Indemnity</td>
<td>7</td>
</tr>
<tr>
<td>16. Costs of litigation</td>
<td>8</td>
</tr>
<tr>
<td>17. Liability insurance</td>
<td>8</td>
</tr>
<tr>
<td>18. Bond, performance</td>
<td>9</td>
</tr>
<tr>
<td>19. Lessor's lien</td>
<td>9</td>
</tr>
<tr>
<td>20. Mortgage</td>
<td>10</td>
</tr>
<tr>
<td>21. Breach</td>
<td>10</td>
</tr>
<tr>
<td>22. Right of holder of record of a security interest</td>
<td>11</td>
</tr>
<tr>
<td>23. Condemnation</td>
<td>12</td>
</tr>
<tr>
<td>24. Right to enter</td>
<td>12</td>
</tr>
<tr>
<td>25. Inspection by prospective bidders</td>
<td>13</td>
</tr>
</tbody>
</table>
### TABLE OF CONTENTS (cont'd)

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>26. Acceptance of rent not a waiver</td>
<td>13</td>
</tr>
<tr>
<td>27. Extension of time</td>
<td>13</td>
</tr>
<tr>
<td>28. Justification of sureties</td>
<td>13</td>
</tr>
<tr>
<td>29. Waiver, modification, reimposition of bond and liability insurance provisions</td>
<td>14</td>
</tr>
<tr>
<td>30. Quiet enjoyment</td>
<td>14</td>
</tr>
<tr>
<td>31. Surrender</td>
<td>14</td>
</tr>
<tr>
<td>32. Non-warranty</td>
<td>15</td>
</tr>
<tr>
<td>33. Hazardous materials</td>
<td>15</td>
</tr>
<tr>
<td>34. Hawaii law</td>
<td>15</td>
</tr>
<tr>
<td>35. Exhibits - Incorporation in lease</td>
<td>16</td>
</tr>
<tr>
<td>36. Headings</td>
<td>16</td>
</tr>
<tr>
<td>37. Partial invalidity</td>
<td>16</td>
</tr>
<tr>
<td>38. Time is of the essence</td>
<td>16</td>
</tr>
<tr>
<td>39. Historic preservation</td>
<td>16</td>
</tr>
<tr>
<td>40. Incorporation by reference</td>
<td>16</td>
</tr>
</tbody>
</table>

### SPECIAL CONDITIONS:

41. etc. .............................................................................

### DEFINITIONS

SIGNATURE PAGE .....................................................................

ACKNOWLEDGMENT PAGE .....................................................
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
GENERAL LEASE NO. S-

THIS LEASE, made this _______ day of _______, 20___, by and between the STATE OF HAWAII, hereinafter referred to as the "Lessor," by its Board of Land and Natural Resources, called the "Board," and _______________________________________,
whose address is ___________________________________, hereinafter referred to as the "Lessee."

WITNESSETH:

The Lessor, pursuant to Section 171-35, 171-37, 171-95(a)(2), Hawaii Revised Statutes, for and in consideration of the rent to be paid and of the terms, covenants and conditions herein contained, all on the part of the Lessee to be kept, observed and performed, does lease unto the Lessee, and the Lessee does lease from the Lessor the premises situate at ______,
and identified as " _______," containing an area of _______ more particularly described in Exhibit "A" and as shown on the map marked Exhibit "B," attached hereto and made parts hereof.

TO HAVE AND TO HOLD the leased premises unto the Lessee for the term of _______ (____) years, commencing on the _______ day of _______, 20___, up to and including the _______ day of _______, ______, unless sooner terminated as hereinafter provided, the Lessor reserving and the Lessee yielding and paying to the Lessor at the Office of the Department of Land and Natural Resources, Honolulu, Oahu, State of Hawaii, an annual rental as provided hereinbelow, payable in advance, without notice or demand, in equal ______________ installments on _______ of each and every year during the term as follows:

A. For the first _______ (____) years, the sum of ______________ DOLLARS ($____________) per annum.
B. The annual rental reserved shall be reopened and redetermined on the

No Percentage Rent:

C. Determination of rent upon reopening. The rental for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor’s receipt of Lessee’s notification, Lessee’s appraiser and the Board’s appraiser shall appoint a third appraiser, unless Lessee’s appraiser and the Board’s appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee’s own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board’s appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board’s appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.
Percentage Rent:

C. Determination of base rent and percentage rent upon reopening. The base rent and percentage rent for any ensuing period shall be the fair market rental at the time of reopening. At least six months prior to the time of reopening, the fair market rental, which must include both base rent and percentage rent, shall be determined by:

(1) An employee of the Department of Land and Natural Resources qualified to appraise lands; or

(2) A disinterested appraiser whose services shall be contracted for by the Board. Lessee shall be notified of the determination by certified mail, return receipt requested.

Lessee must notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, whose name and address shall be stated in the notice. The determination shall be deemed received by Lessee on the date the Lessee signs the return receipt or three (3) days after mailing, whichever occurs first. Within sixty (60) days of Lessor’s receipt of Lessee’s notification, Lessee’s appraiser and the Board’s appraiser shall appoint a third appraiser, unless Lessee’s appraiser and the Board’s appraiser have agreed upon the fair market rental, and the fair market rental shall be determined by arbitration as provided in chapter 658A, Hawaii Revised Statutes. The Lessee shall pay for the Lessee’s own appraiser, the Board shall pay for its appraiser, and the cost of the third appraiser shall be borne equally by the Lessee and the Board. In the event that the fair market rental is not finally determined before the reopening date, the Lessee shall pay the rental as determined by the Board’s appraiser until the new rent is determined, and the rental paid by Lessee shall then be subject to retroactive adjustments as appropriate.

Should the Lessee fail to notify Lessor in writing within thirty (30) days after receipt of the determination that Lessee disagrees with the fair market rental as determined by the Board’s appraiser and that Lessee has appointed its own appraiser, then the fair market rental as determined by the Board’s appraiser shall be deemed to have been accepted by Lessee and shall be the fair market rental as of the date of reopening.
D. The interest rate on any and all unpaid or delinquent rentals shall be at one percent (1%) per month, plus a service charge of FIFTY AND NO/100 DOLLARS ($50.00) a month for each delinquent payment.

RESERVING UNTO THE LESSOR THE FOLLOWING:

1. Minerals and waters. (a) All minerals as hereinafter defined, in, on or under the premises and the right, on its own behalf or through persons authorized by it, to prospect for, mine and remove the minerals and to occupy and use so much of the surface of the ground as may be required for all purposes reasonably extending to the mining and removal of the minerals by any means whatsoever, including strip mining. "Minerals," as used herein, shall mean any or all oil, gas, coal, phosphate, sodium, sulphur, iron, titanium, gold, silver, bauxite, bauxitic clay, diasporite, boehmite, laterite, gibbsite, alumina, all ores of aluminum and, without limitation thereon, all other mineral substances and ore deposits, whether solid, gaseous or liquid, including all geothermal resources, in, on, or under the land, fast or submerged; provided, that "minerals" shall not include sand, gravel, rock or other material suitable for use and used in general construction in furtherance of the Lessee's permitted activities on the premises and not for sale to others. (b) All surface and ground waters appurtenant to the premises and the right on its own behalf or through persons authorized by it, to capture, divert or impound the same and to occupy and use so much of the premises required in the exercise of this right reserved; provided, however, that as a condition precedent to the exercise by the Lessor of the rights reserved in this paragraph, just compensation shall be paid to the Lessee for any of Lessee's improvements taken.

2. Ownership of improvements. The ownership of all improvements of whatever kind or nature, including but not limited to fences and stockwater system(s) located on the land prior to or on the commencement date of this lease, excluding those improvements constructed during the term of this lease unless provided otherwise.

SUBJECT TO the rights of native tenants and to regulatory rights and ownership rights (if any) of the State of Hawaii established pursuant to state law including chapter 6E, Hawaii Revised Statutes, over prehistoric or historic remains found in, on, or under the land.
THE LESSEE COVENANTS AND AGREES WITH THE LESSOR AS FOLLOWS:

1. Payment of rent. The Lessee shall pay the rent to the Lessor at the times, in the manner and form provided in this lease and at the place specified above, or at any other place the Lessor may from time to time designate, in legal tender of the United States of America.

2. Taxes, assessments, etc. The Lessee shall pay or cause to be paid, when due, the amount of all taxes, rates, and assessments of every description as to which the premises or any part, or any improvements, or the Lessor or Lessee, are now or may be assessed or become liable by authority of law during the term of this lease; provided, however, that with respect to any assessment made under any betterment or improvement law which may be payable in installments, Lessee shall be required to pay only those installments, together with interest, which becomes due and payable during the term of this lease.

3. Utility services. The Lessee shall be responsible for obtaining any utility services and shall pay when due all charges, duties and rates of every description, including water, sewer, gas, refuse collection or any other charges, as to which the premises or any part, or any improvements, or the Lessor or Lessee may become liable for during the term, whether assessed to or payable by the Lessor or Lessee.

4. Covenant against discrimination. The use and enjoyment of the premises shall not be in support of any policy which discriminates against anyone based upon race, creed, sex, color, national origin, religion, marital status, familial status, ancestry, physical handicap, disability, age or HIV (human immunodeficiency virus) infection.

5. Sanitation. The Lessee shall keep the premises and improvements in a strictly clean, sanitary and orderly condition.

6. Waste and unlawful, improper or offensive use of premises. The Lessee shall not commit, suffer or permit to be committed any waste, nuisance, strip, or unlawful, improper or offensive use of the premises or any part, nor, without the prior written consent of the Lessor, cut down, remove or destroy, or suffer to be cut down, removed or destroyed, any trees now growing on the premises.
7. Compliance with laws. The Lessee shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the premises, now in force or which may be in force.

8. Inspection of premises. The Lessee shall permit the Lessor and its agents, at all reasonable times during the lease term, to enter the premises and examine the state of its repair and condition.

9. Improvements. The Lessee shall not at any time during the term construct, place, maintain or install on the premises any building, structure or improvement of any kind and description except with the prior written approval of the Chairperson and upon those conditions the Chairperson may impose, including any adjustment of rent, unless otherwise provided in this lease. The Lessee shall own these improvements until the expiration or other termination of the lease, at which time the ownership shall, at the option of the Lessor, remain and become the property of the Lessor or shall be removed by Lessee at Lessee's sole cost and expense.

10. Repairs to improvements. The Lessee shall, at its own expense, keep, repair, and maintain all buildings and improvements now existing or hereafter constructed or installed on the premises in good order, condition and repair, reasonable wear and tear excepted.

11. Liens. The Lessee shall not commit or suffer any act or neglect which results in the premises, any improvement, or the leasehold estate of the Lessee becoming subject to any attachment, lien, charge, or encumbrance, except as provided in this lease, and shall indemnify, defend, and hold the Lessor harmless from and against all attachments, liens, charges, and encumbrances and all resulting expenses.

12. Character of use. The Lessee shall use or allow the premises leased to be used solely for __________________________ purpose(s).

13. Assignments, etc. The Lessee shall not transfer, assign, or permit any other person to occupy or use the premises, or any portion, or transfer or assign this lease or any interest, either voluntarily or by operation of law, except by way of devise, bequest, or intestate succession, and any transfer or assignment made shall be null and void; provided that with the prior written approval of the Board the assignment and transfer
of this lease, or any portion, may be made in accordance with current industry standards, as determined by the Board; provided, further, that prior to the approval of any assignment of lease, the Board shall have the right to review and approve the consideration paid by the Assignee and may condition its consent to the assignment of the lease on payment by the Lessee of a premium based on the amount by which the consideration for the assignment, whether by cash, credit, or otherwise, exceeds the straight-line depreciated cost of improvements and trade fixtures being transferred to the Assignee pursuant to the Assignment of Lease Evaluation Policy adopted by the Board on December 15, 1989, as amended, a copy of which is attached hereto as Exhibit "__". The premium on any subsequent assignments shall be determined as specified in the above-mentioned Evaluation Policy.

With respect to state agricultural leases, in the event of foreclosure or sale, the above-described premium shall be assessed only after the encumbrances of record and any other advances made by the holders of a security interest are paid.

If the Lessee is a partnership, joint venture or corporation, the sale or transfer of 20% or more of ownership interest or stocks by dissolution, merger or any other means shall be deemed an assignment for purposes of this paragraph and subject to the right of the Lessor to impose the foregoing premium as set forth in Exhibit "__".

14. Subletting. The Lessee shall not rent or sublet the whole or any portion of the premises, without the prior written approval of the Board; provided, however, that prior to this approval, the Board shall have the right to review and approve the rent to be charged to the proposed sublessee and that in the case where the Lessee is required to pay rent based on a percentage of its gross receipts, the receipts of the sublessee or any subsequent sublessees shall be included as part of the Lessee's gross receipts, and the Board shall have the right to revise the rent for the premises based upon the rental rate charged to the sublessee including the percentage rent, if applicable, and provided, further, that the rent may not be revised downward. For good cause, the Board may waive the requirement that the Lessee obtain prior written approval to rent or sublet all or any portion of the premises.

15. Indemnity. The Lessee shall indemnify, defend, and hold the Lessor harmless from and against any claim or demand for loss, liability, or damage, including claims for bodily injury, wrongful death, or property damage, arising out of or resulting from: 1) any act or omission on the part of Lessee
relating to Lessee's use, occupancy, maintenance, or enjoyment of the premises; 2) any failure on the part of the Lessee to maintain the premises and sidewalks, roadways and parking areas adjacent thereto in Lessee's use and control, and including any accident, fire or nuisance, growing out of or caused by any failure on the part of the Lessee to maintain the premises in a safe condition; and 3) from and against all actions, suits, damages, and claims by whomever brought or made by reason of the Lessee's non-observance or non-performance of any of the terms, covenants, and conditions of this lease or the rules, regulations, ordinances, and laws of the federal, state, municipal or county governments.

16. Costs of litigation. In case the Lessor shall, without any fault on Lessor's part, be made a party to any litigation commenced by or against the Lessee (other than condemnation proceedings), the Lessee shall pay all costs, including reasonable attorney's fees, and expenses incurred by or imposed on the Lessor; furthermore, the Lessee shall pay all costs, including reasonable attorney's fees, and expenses which may be incurred by or paid by the Lessor in enforcing the covenants and agreements of this lease, in recovering possession of the premises, or in the collection of delinquent rental, taxes, and any and all other charges.

17. Liability insurance. The Lessee shall procure and maintain, at its cost and expense and acceptable to the Lessor, in full force and effect throughout the term of this lease, comprehensive general liability insurance, or its equivalent, with 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-" or other comparable and equivalent industry rating, in an amount of at least $1,000,000.00 for each occurrence and $2,000,000.00 aggregate, and with coverage terms acceptable to the Chairperson of the Board. 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. The insurance shall cover the entire premises, including all buildings, improvements, and grounds and all roadways or sidewalks on or adjacent to the premises in the use or control of the Lessee.

The Lessee, prior to entry and use of the premises or within fifteen (15) days from the effective date of this lease, whichever is sooner, shall furnish the Lessor with a certificate(s) showing the policy(s) to be initially in force, keep the certificate(s) on deposit during the entire lease term, and furnish a like certificate(s) upon each renewal of the
policy(s). This insurance shall not be cancelled, limited in scope of coverage, or nonrenewed until after thirty (30) days written notice has been given to the Lessor. The Lessor may at any time require the Lessee to provide Lessor with copies of the insurance policy(s) that are or were in effect during the lease period.

The Lessor shall retain the right at any time to review the coverage, form, and amount of the insurance required by this lease. If, in the opinion of the Lessor, the insurance provisions in this lease do not provide adequate protection for the Lessor, the Lessor may require Lessee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Lessor's requirements shall be reasonable but shall be designed to assure protection for and against the kind and extent of the risks which exist at the time a change in insurance is required. The Lessor shall notify Lessee in writing of changes in the insurance requirements and Lessee shall deposit copies of acceptable insurance policy(s) or certificate(s) thereof, with the Lessor incorporating the changes within thirty (30) days of receipt of the notice.

The procuring of the required policy(s) of insurance shall not be construed to limit Lessee's liability under this lease nor to release or relieve the Lessee of the indemnification provisions and requirements of this lease. Notwithstanding the policy(s) of insurance, Lessee shall be obligated for the full and total amount of any damage, injury, or loss caused by Lessee's negligence or neglect connected with this lease.

It is agreed that any insurance maintained by the Lessor will apply in excess of, and not contribute with, insurance provided by Lessee's policy.

18. Bond, performance. The Lessee shall, at its own cost and expense, within fifteen (15) days from the effective date of this lease, procure and deposit with the Lessor and thereafter keep in full force and effect during the term of this lease a good and sufficient surety bond, conditioned upon the full and faithful observance and performance by Lessee of all the terms, conditions, and covenants of this lease, in an amount equal to two times the annual rental then payable. This bond shall provide that in case of a breach or default of any of the lease terms, covenants, conditions, and agreements, the full amount of the bond shall be paid to the Lessor as liquidated and ascertained damages and not as a penalty.

19. Lessor's lien. The Lessor shall have a lien on
all the buildings and improvements placed on the premises by the
Lessees, on all property kept or used on the premises, whether the
same is exempt from execution or not and on the rents of all
improvements and buildings located on the premises for all
Lessor's costs, attorney's fees, rent reserved, for all taxes and
assessments paid by the Lessor on behalf of the Lessee, and for
the payment of all money provided in this lease to be paid by the
Lessee, and this lien shall continue until the amounts due are
paid.

20. Mortgage. Except as provided in this lease, the
Lessee shall not mortgage, hypothecate, or pledge the premises,
any portion, or any interest in this lease without the prior
written approval of the Chairperson and any mortgage,
hypothecation, or pledge without the approval shall be null and
void.

Upon due application and with the written consent of
the Chairperson, the Lessee may mortgage this lease, or any
interest, or create a security interest in the leasehold of the
public land. If the mortgage or security interest is to a
recognized lending institution in either the State of Hawaii or
elsewhere in the United States, the consent may extend to
foreclosure and sale of Lessee's interest at the foreclosure to
any purchaser, including the mortgagee, without regard to whether
or not the purchaser is qualified to lease, own, or otherwise
acquire and hold the land or any interest. The interest of the
mortgagee or holder shall be freely assignable. The term
"holder" shall include an insurer or guarantor of the obligation
or condition of the mortgage, including the Department of Housing
and Urban Development through the Federal Housing Administration,
the Federal National Mortgage Association, the Veterans
Administration, the Small Business Administration, Farmers Home
Administration, or any other Federal agency and their respective
successors and assigns or any lending institution authorized to
do business in the State of Hawaii or elsewhere in the United
States; provided, that the consent to mortgage to a
non-governmental holder shall not confer any greater rights or
powers in the holder than those which would be required by any of
these Federal agencies.

If the Lessee shall fail to pay the rent, or any part thereof, at
the times and in the manner provided in this lease and this
failure shall continue for a period of more than thirty (30) days
after delivery by the Lessor of a written notice of breach or
default and demand for cure, by personal service, registered mail
or certified mail to the Lessee and to each holder of record
having a security interest in the premises, or if the Lessee shall become bankrupt, or shall abandon the premises, or if this lease and premises shall be attached or taken by operation of law, or if any assignment is made of the Lessee's property for the benefit of creditors, or if Lessee shall fail to observe and perform any of the covenants, terms, and conditions contained in this lease and on its part to be observed and performed, and this failure shall continue for a period of more than sixty (60) days after delivery by the Lessor of a written notice of breach or default and demand for cure, by personal service, registered mail or certified mail to the Lessee at its last known address and to each holder of record having a security interest in the premises, the Lessor may, subject to the provisions of Section 171-21, Hawaii Revised Statutes, at once re-enter the premises, or any part, and upon or without the entry, at its option, terminate this lease without prejudice to any other remedy or right of action for arrears of rent or for any preceding or other breach of contract; and in the event of termination, at the option of the Lessor, all buildings and improvements shall remain and become the property of the Lessor or shall be removed by Lessee; furthermore, Lessor shall retain all rent paid in advance to be applied to any damages.

22. Right of holder of record of a security interest. In the event the Lessor seeks to forfeit the privilege, interest, or estate created by this lease, each recorded holder of a security interest may, at its option, cure or remedy the default or breach of rent payment within thirty (30) days or any other default or breach within sixty (60) days, from the date of receipt of the Lessor's notice, or within an additional period allowed by Lessor for good cause, and add the cost to the mortgage debt and the lien of the mortgage. Upon failure of the holder to exercise its option, the Lessor may: (a) pay to the holder from any moneys at its disposal, including the special land and development fund, the amount of the mortgage debt, together with interest and penalties, and secure an assignment of the debt and mortgage from the holder or if ownership of the privilege, interest, or estate shall have vested in the holder by way of foreclosure, or action in lieu thereof, the Lessor shall be entitled to the conveyance of the privilege, interest, or estate upon payment to the holder of the amount of the mortgage debt, including interest and penalties, and all reasonable expenses incurred by the holder in connection with the foreclosure and preservation of its security interest, less appropriate credits, including income received from the privilege, interest, or estate subsequent to the foreclosure; or (b) if the property cannot be reasonably reassigned without loss to the State, then terminate the outstanding privilege, interest,
or estate without prejudice to any other right or remedy for
arrears of rent or for any preceding or other breach or default
and use its best efforts to redigpose of the affected land to a
qualified and responsible person free and clear of the mortgage
and the debt secured; provided that a reasonable delay by the
Lessor in instituting or prosecuting its rights or remedies shall
not operate as a waiver of these rights or to deprive it of a
remedy when it may still otherwise hope to resolve the problems
created by the breach or default. The proceeds of any
redisposition shall be applied, first, to reimburse the Lessor
for costs and expenses in connection with the redisposition;
second, to discharge in full any unpaid purchase price or other
indebtedness owing the Lessor in connection with the privilege,
interest, or estate terminated; third, to the mortgagee to the
extent of the value received by the State upon redisposition
which exceeds the fair market lease value of the land as
previously determined by the State's appraiser; and fourth, to
the owner of the privilege, interest, or estate.

23. Condemnation. If at any time, during the term of
this lease, any portion of the premises should be condemned, or
required for public purposes by any county or city and county,
the rent shall be reduced in proportion to the value of the
portion of the premises condemned. The Lessee shall be entitled
to receive from the condemning authority (a) the value of growing
crops, if any, which Lessee is not permitted to harvest and (b)
the proportionate value of the Lessee's permanent improvements so
taken in the proportion that it bears to the unexpired term of
the lease; provided, that the Lessee may, in the alternative,
remove and relocate its improvements to the remainder of the
premises occupied by the Lessee. The Lessee shall not by reason
of the condemnation be entitled to any claim against the Lessor
for condemnation or indemnity for leasehold interest and all
compensation payable or to be paid for or on account of the
leasehold interest by reason of the condemnation shall be payable
to and be the sole property of the Lessor. The foregoing rights
of the Lessee shall not be exclusive of any other to which Lessee
may be entitled by law. Where the portion taken renders the
remainder unsuitable for the use or uses for which the premises
were leased, the Lessee shall have the option to surrender this
lease and be discharged and relieved from any further liability;
provided, that Lessee may remove the permanent improvements
constructed, erected and placed by it within any reasonable
period allowed by the Lessor.

24. Right to enter. The Lessor or the County and
their agents or representatives shall have the right to enter and
cross any portion of the premises for the purpose of performing
any public or official duties; provided, however, in the exercise
of these rights, the Lessor or the County shall not interfere
unreasonably with the Lessee or Lessee's use and enjoyment of the
premises.

25. Inspection by prospective bidders. The Lessor
shall have the right to authorize any person or persons to enter
upon and inspect the premises at all reasonable times following a
published notice for its proposed disposition for purposes of
informing and apprising that person or persons of the condition
of the premises preparatory to the proposed disposition;
provided, however, that any entry and inspection shall be
conducted during reasonable hours after notice to enter is first
given to the Lessee, and shall, if the Lessee so requires, be
made in the company of the Lessee or designated agents of the
Lessee; provided, further, that no authorization shall be given
more than two years before the expiration of the term of this
lease.

26. Acceptance of rent not a waiver. The acceptance
of rent by the Lessor shall not be deemed a waiver of any breach
by the Lessee of any term, covenant, or condition of this lease,
nor of the Lessor's right of re-entry for breach of covenant, nor
of the Lessor's right to declare and enforce a forfeiture for any
breach, and the failure of the Lessor to insist upon strict
performance of any term, covenant, or condition, or to exercise
any option conferred, in any one or more instances, shall not be
construed as a waiver or relinquishment of any term, covenant,
condition, or option.

27. Extension of time. Notwithstanding any provision
contained in this lease, when applicable, the Board may for good
cause shown, allow additional time beyond the time or times
specified in this lease for the Lessee to comply, observe, and
perform any of the lease terms, conditions, and covenants.

28. Justification of sureties. Any bonds required by
this lease shall be supported by the obligation of a corporate
surety organized for the purpose of being a surety and qualified
to do business in the State of Hawaii, or by not less than two
personal sureties, corporate or individual, for which
justifications shall be filed as provided in Section 78-20,
Hawaii Revised Statutes; provided, however, the Lessee may
furnish a bond in like amount, conditioned as aforesaid, executed
by it alone as obligor, if, in lieu of any surety or sureties, it
shall also furnish and at all times thereafter keep and maintain
on deposit with the Lessor security in certified checks,
certificates of deposit (payable on demand or after a period the
Lessor may stipulate), bonds, stocks or other negotiable securities properly endorsed, or execute and deliver to the Lessor a deed or deeds of trust of real property, all of a character which is satisfactory to Lessor and valued in the aggregate at not less than the principal amount of the bond. It is agreed that the value of any securities which may be accepted and at any time thereafter held by the Lessor shall be determined by the Lessor, and that the Lessee may, with the approval of the Lessor, exchange other securities or money for any of the deposited securities if in the judgment of the Lessor the substitute securities or money shall be at least equal in value to those withdrawn. It is further agreed that substitution of sureties or the substitution of a deposit of security for the obligation of a surety or sureties may be made by the Lessee, but only upon the written consent of the Lessor and that until this consent is granted, which shall be discretionary with the Lessor, no surety shall be released or relieved from any obligation.

29. Waiver, modification, reimposition of bond and liability insurance provisions. Upon substantial compliance by the Lessee with the terms, covenants, and conditions contained in this lease on its part to be observed or performed, the Lessor at its discretion may in writing, waive or suspend the performance bond or improvement bond requirements or both or may, in writing, modify the particular bond(s) or liability insurance requirements by reducing its amount; provided, however, that the Lessor reserves the right to reactivate the bonds or reimpose the bond(s) or liability insurance in and to their original tenor and form at any time throughout the term of this lease.

30. Quiet enjoyment. The Lessor covenants and agrees with the Lessee that upon payment of the rent at the times and in the manner provided and the observance and performance of these covenants, terms, and conditions on the part of the Lessee to be observed and performed, the Lessee shall and may have, hold, possess, and enjoy the premises for the term of the lease, without hindrance or interruption by the Lessor or any other person or persons claiming by, through, or under it.

31. Surrender. The Lessee shall, at the end of the term or other sooner termination of this lease, peaceably deliver unto the Lessor possession of the premises in a clean and orderly condition, together with all improvements existing or constructed thereon or Lessee shall remove such improvements, at the option of the Lessor. Furthermore, upon the expiration, termination, or revocation of this lease, should the Lessee fail to remove any and all of Lessee's personal property from the premises, after notice thereof, the Lessor may remove any and all personal
property from the premises and either deem the property abandoned and dispose of the property or place the property in storage at the cost and expense of Lessee, and the Lessee does agree to pay all costs and expenses for disposal, removal, or storage of the personal property. This provision shall survive the termination of the lease.

32. Non-warranty. The Lessor does not warrant the conditions of the premises, as the same are being leased as is.

33. Hazardous materials. Lessee shall not cause or permit the escape, disposal or release of any hazardous materials except as permitted by law. Lessee shall not allow the storage or use of such materials in any manner not sanctioned by law or by the highest standards prevailing in the industry for the storage and use of such materials, nor allow to be brought onto the premises any such materials except to use in the ordinary course of Lessee's business, and then only after written notice is given to Lessor of the identity of such materials and upon Lessor's consent which consent may be withheld at Lessor's sole and absolute discretion. If any lender or governmental agency shall ever require testing to ascertain whether or not there has been any release of hazardous materials by Lessee, then the Lessee shall be responsible for the reasonable costs thereof. In addition, Lessee shall execute affidavits, representations and the like from time to time at Lessor's request concerning Lessee's best knowledge and belief regarding the presence of hazardous materials on the premises placed or released by Lessee.

Lessee agrees to indemnify, defend, and hold Lessor harmless, from any damages and claims resulting from the release of hazardous materials on the premises occurring while Lessee is in possession, or elsewhere if caused by Lessee or persons acting under Lessee. These covenants shall survive the expiration or earlier termination of the lease.

For the purpose of this lease "hazardous material" shall mean any pollutant, toxic substance, hazardous waste, hazardous material, hazardous substance, or oil as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the Federal Clean Water Act, or any other federal, state, or local environmental law, regulation, ordinance, rule, or by-law, whether existing as of the date hereof, previously enforced, or subsequently enacted.

34. Hawaii law. This lease shall be construed, interpreted, and governed by the laws of the State of Hawaii.
35. Exhibits - Incorporation in lease. All exhibits referred to are attached to this lease and hereby are deemed incorporated by reference.

36. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this lease.

37. Partial invalidity. If any term, provision, covenant or condition of this lease should be held to be invalid, void or unenforceable, the remainder of this lease shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

38. Time is of the essence. Time is of the essence in all provisions of this lease.

39. Historic preservation. In the event any historic properties or burial sites, as defined in section 6E-2, Hawaii Revised Statutes, are found on the premises, the Lessee and the Lessee's agents, employees and representatives shall immediately stop all land utilization or work or both and contact the Historic Preservation Office in compliance with chapter 6E, Hawaii Revised Statutes.

40. Incorporation by reference. References in this lease to various parcels of land are in accordance with those designated in the Notice of Sale and the Conduct of Sale which, together with the Special Notice to Bidders, are incorporated and made a part of this lease. The terms of this lease shall govern where there is any inconsistency between the lease terms and the terms contained in the Special Notice to Bidders.
SPECIAL CONDITIONS

41. Full utilization of the land. The Lessee shall, within the first ( ) years of the lease term, utilize the land under lease for the purposes for which this lease is sold, all in accordance with a conservation plan pursuant to paragraph 42, Good husbandry and conservation program of this lease.

42. Good husbandry and conservation program. The Lessee shall at all times practice good husbandry and carry out a program of conservation in cooperation with the appropriate Soil and Water Conservation District, with which district the Lessee shall maintain cooperative status. The conservation program shall be in accordance with a conservation plan which shall be submitted to the Chairperson for acceptance within one (1) year following lease commencement. The conservation plan shall include, but not be limited to, those practices as land clearing, cropping system, irrigation system, drainage, noxious weed control and others needed to protect the land against deterioration and to prevent environmental degradation; provided, however, that this requirement may be waived for leases with little or no apparent conservation problems when verified by the appropriate Soil and Water Conservation District. In the event the activities of the Lessee in this regard shall be found to be unsatisfactory to the Chairperson, the Chairperson shall notify the Lessee and the Lessee shall be required, within sixty (60) days of the notice, to cure the fault and submit proof satisfactory to the Chairperson.

43. Boundary fences. The Lessee shall, within six (6) months of the lease commencement date, install stockproof fence along the entire outside perimeter of the land under lease where the fencing does not now exist, regardless of whether the Lessee has an interest or ownership in adjoining lands, and shall maintain these fences in good order and condition throughout the term of this lease and those now existing on the premises. The Lessee shall, wholly at its own cost and expense, stake out the boundaries wherever necessary in conformance with the legal descriptions provided in this lease. The cost of installing and maintaining the boundary fences shall be in accordance with Part II of chapter 664, Hawaii Revised Statutes, which provides generally for the sharing of the costs by adjacent landowners or Lessees for the purpose of confining animals of each adjacent owner or Lessee unless the adjacent land is owned and not leased by the government.
44. Exclusion of animals from forest lands. The Lessee shall at all times during the lease term keep its cattle, horses, and other grazing animals out of any forest reserve, if any, adjacent to the premises and shall take all reasonable precautions to prevent forest fires, and in the event fires occur, it shall use all reasonable means at its command or under its control to have the fires speedily extinguished.

45. Withdrawal. The Lessor shall have the right to withdraw the premises, or any portion, at any time during the term of this lease upon giving reasonable notice and without compensation, except as otherwise provided in the lease, for public uses or purposes, including residential, commercial, industrial, or resort developments, for constructing new roads or extensions, or changes in line or grade of existing roads, for rights of way and easements of all kinds, and shall be subject to the right of the Board to remove soil, rock or gravel as may be necessary for the construction of roads and rights of way within or without the premises; provided, that upon the withdrawal, or upon the taking which causes any portion of the land originally leased to become unusable for the specific use or uses for which it was leased, the rent shall be reduced in proportion to the value of the land withdrawn or made unusable, and if any permanent improvement constructed upon the land by the Lessee is destroyed or made unusable in the process of the withdrawal or taking, the proportionate value shall be paid based upon the unexpired term of the lease; provided, further, that no withdrawal or taking shall be had of those portions of the land harvested, unless the Board pays to the Lessee the value of those crops.

46. Clearances. The Lessee shall be responsible for obtaining all necessary federal, state or county clearances.

47. Restriction on residential use. The premises, or any portion, shall not be utilized for residential purposes. The construction or placement of any structure on the premises for residential purposes is strictly prohibited.

48. Hunting. No hunting shall be allowed on the premises during the term of this lease.

49. Audit and examination of books, etc. The Lessee shall, at all reasonable times, permit the Lessor or its authorized agents and employees, upon reasonable notice given by the Lessor, to audit, examine and to make copies of all books, accounts, records and receipts of the Lessee concerning its operations under this lease.
50. Commercial operations. The Lessee, its employees, customers, guests, agents or invitees shall not display or offer for sale or sell any article(s) or merchandise whatsoever within the premises without the prior written approval of the Lessor and upon such terms and conditions established by the Lessor. Except as otherwise provided in this lease, no commercial activities whatsoever shall be allowed within the premises without the prior written approval of the Lessor.

51. Abandoned vehicles. Lessee shall take all steps necessary to prevent the placing or storing of abandoned vehicles within the premises. Any and all abandoned vehicles within the premises shall be removed by Lessee at Lessee's cost and expense.

52. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

53. Dwelling restriction. The Lessee shall not place or construct any dwelling unit in excess of one family dwelling unit on the premises; provided, further, that this dwelling unit shall be constructed in accordance with plans and specifications approved by the Chairperson of the Board of Land and Natural Resources.

54. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagee, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage,
bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

55. Removal of trash. The Lessee shall be responsible for the removal of all trash upon the premises, whether or not placed on the premises by Lessee or with or without Lessee's consent, and whether or not placed on the premises prior to the term of this lease.

56. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.

57. Survey and boundary stakeout. The Lessee shall be solely responsible for any survey and boundary stakeout of the leased premises.
SPECIAL CONDITIONS

41. Improvements. The Lessee shall, at its own cost and expense, within ___ ( ___ ) years as of the date of lease commencement, complete the construction of

at a cost of not less than __________________ DOLLARS ($ __________________ ) ("Building Requirement"), in accordance with plans and specifications submitted by the Lessee to and approved in writing by the Chairperson and in full compliance with all applicable laws, ordinances, rules and regulations.

42. Bond, improvement. The Lessee, upon submittal and written approval of the construction plan shall within sixty (60) days procure and deposit with the Lessor a surety bond, acceptable to the Chairperson, in an amount equal to the cost of construction of the Building Requirement, but in no event shall the amount be less than NO/100 DOLLARS ($ __________________ ), which bond shall name the State as obligee, conditioned upon the faithful observance and performance of the Building Requirement contained in this lease, the completion of the Building Requirement on or before the specified date of completion free from all liens and claims, and that the Lessee shall indemnify, defend, and hold the State harmless from all liens, suits, actions or damages arising out of, caused from or attributable to the work performed pursuant to the Building Requirement.

43. Fire and extended coverage insurance. The Lessee, at its cost and expense, shall procure and maintain at all times during the term of this lease, fire and extended coverage insurance with an insurance company(s) licensed to do business in the State of Hawaii, insuring all buildings and improvements erected on the leased land in the joint names of Lessor and Lessee, with the standard mortgage clause for Mortgagor, if any, as their interest may appear, in an amount equal to the replacement cost of the facilities, and shall pay the premiums at the time and place required under the policy.

In the event of total or partial loss, any proceeds derived from the policy(s) shall be used by the Lessee for rebuilding, repairing, or otherwise reinstating the same buildings in a good and substantial manner according to plans and specifications approved in writing by the Board; provided, however, that with the approval of the Lessor, the Lessee may
instead surrender this lease and pay the balance owing on any mortgage. Upon surrender of the lease, the Lessee shall then receive that portion of the insurance proceeds which the unexpired term of this lease, at the time of the loss or damage, bears to the whole of the term, with the Lessor to be paid the balance of the proceeds.

The Lessee shall furnish the Lessor on or before the commencement date of this lease, a certificate showing the policy(s) to be in full force and effect and shall furnish a like certificate upon each renewal of the policy(s). Each certificate(s) shall contain or be accompanied by an assurance of the insurer not to cancel the insurance, limit the scope of the coverage, or fail or refuse to renew the policy(s) until after thirty (30) days written notice has been given to the Lessor.

All rights or claims of subrogation against the State of Hawaii, its officers, employees, and agents are waived.

44. Environmental regulations. Lessee shall comply with all applicable federal, state and county environmental impact regulations, including but not limited to chapter 343, Hawaii Revised Statutes, as amended, and regulations governing historic preservation.

45. Phase I environmental site assessment. Prior to termination or revocation of the subject lease or the assignment of the leasehold, Lessee shall conduct a Phase I environmental site assessment and conduct a complete abatement and disposal, if necessary, satisfactory to the standards required by the Federal Environmental Protection Agency, the Department of Health, and the Department of Land and Natural Resources. Failure to comply with the provisions of this paragraph shall not extend the term of this lease or automatically prevent termination or revocation of the lease. The Board, at its sole option, may refuse to approve termination, revocation, or assignment unless this evaluation and abatement provision has been performed. In addition or in the alternative, the Board may, at its sole option if Lessee does not do so, arrange for performance of the provisions of this paragraph, all costs and expenses of such performance to be charged to and paid by Lessee.
Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

(a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

(b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

(c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

(d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

(e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

(f) "Days" shall mean calendar days, unless otherwise specified.
Definitions.

1. The use of any gender shall include all genders, and if there is more than one lessee, then all words used in the singular shall extend to and include the plural.

2. As used in this lease, unless clearly repugnant to the context:

   (a) "Chairperson" means the Chairperson of the Board of Land and Natural Resources of the State of Hawaii or his successor.

   (b) "Lessee" means and includes the Lessee, its officers, employees, invitees, successors or permitted assigns.

   (c) "Holder of record of a security interest" means a person who is the owner or possessor of a security interest in the land leased and who has filed with the Department of Land and Natural Resources and with the Bureau of Conveyances of the State of Hawaii a copy of this interest.

   (d) "Premises" means the land leased and all buildings and improvements now or hereinafter constructed and installed on the land leased.

   (e) "Waste" includes, but is not limited to, (1) permitting the premises, or any portion, to become unduly eroded or failure to take proper precautions or make reasonable effort to prevent or correct the erosion; (2) permitting a substantial increase in noxious weeds in uncultivated portions of the premises; and (3) failure to employ all of the usable portions of the premises.

   (f) "Days" shall mean calendar days, unless otherwise specified.

   (g) "Noxious weed" means any plant species which is injurious, harmful, or deleterious or which may be likely to become so to the agricultural, horticultural, and livestock industries of the State, as determined by the Department of Agriculture of the State of Hawaii by administrative rules.

   (h) "Pasture" means the conduct of livestock operation consisting of keeping cattle, primarily, and others, in a minor role, such as horses and sheep where animals graze the land for feed produced thereon. Compatible uses as woodland management, wildlife management and the cultivation of feed crops to be used
strictly within the premises is permitted. The operation of commercial activities such as feedlots (excepting a private feedlot designed to feed the Lessee's own cattle), dairy milking parlors, or boarding of horses is not permitted.

(i) "Timber" means any trees standing within designated areas of the leased land which are covered by a woodland management plan.

(j) "Diversified agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and shall not include or embrace the cultivation and harvesting of grasses or forage crops.

(k) "General agriculture" means the cultivation and harvesting of truck, orchard, flower or nursery crops and the grazing and pasturing of animals other than pigs.

(l) "Intensive agriculture" means the cultivation of truck, orchard, flower and foliage crops and any other agricultural use allowed under the county zoning excluding pasture, raising of animals, and raising of poultry.
IN WITNESS WHEREOF, the STATE OF HAWAII, by its Board of Land and Natural Resources, has caused the seal of the Department of Land and Natural Resources to be hereunto affixed and the parties hereto have caused these presents to be executed the day, month and year first above written.

STATE OF HAWAII

Approved by the Board of Land and Natural Resources at its meeting held on _____________.

By___________________________
Chairperson
Board of Land and Natural Resources

LESSOR

____________________________

____________________________

LESSEE

APPROVED AS TO FORM:

____________________________
Deputy Attorney General

Dated:_______________________
STATE OF HAWAI'I
)
COUNTY OF
)

On this ___ day of ____________, 20___, before me personally appeared ____________, and ______________, to me known to be the person(s) described in and who executed the foregoing instrument and acknowledged that ________ executed the same as ________ free act and deed.

Notary Public, State of Hawaii

__________________________

My commission expires: ____________

STATE OF HAWAI'I
)
COUNTY OF
)

On this ___ day of ____________, 20___, before me appeared ____________, and ______________, to me personally known, who, being by me duly sworn, did say that they are the ____________, and ______________, respectively of ______________, a Hawaii corporation, and that said instrument was signed in behalf of said corporation by authority of its Board of Directors, and the said ________ and ________ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public, State of Hawaii

__________________________

My commission expires: ____________
STATE OF HAWAII

COUNTY OF

On this __________ day of __________________, 20____, 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

My commission expires: ______________