

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF STATE PARKS
Honolulu, Hawai'i 96813

May 24, 2013

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

O'ahu

Request for a Sole Source Approval for a Proposed Three-Year Lease for the Operation of an Interpretive and Merchandising Kiosk in Diamond Head State Monument, O'ahu and the determination that the exception in Chapter 102-2(b)(10) applies to Pacific Historic Parks.

REQUEST:

Sole Source Approval of Pacific Historic Parks (PHP) for a Memorandum of Agreement and Three Year Lease to Operate an Interpretive and Merchandising Kiosk in Diamond Head State Monument (DHSM), Oahu.

LEGAL REFERENCE:

Chapter 102-2(b) (10), Hawaii Revised Statutes

BACKGROUND:

At the January 11, 2013 Board of Land and Natural Resources meeting (see Exhibit A), the Board approved the Department entering into a Memorandum of Agreement (MOA) and lease with PHP and authorized the Chair to execute the MOA and negotiate and approve the terms of a lease to operate an Interpretive and merchandising kiosk within Diamond Head State Monument.

As stated in the approved January 11 Board submittal, the Division of State Park's (DSP) goal at DHSM is three tiered:

1. Eliminate the vestigial illicit vendors and therefore enhance the quality of the visitor's experience; and
2. Establish a venue and with a partner to sell and distribute DSP souvenir merchandise, Provide interpretive materials associated with DHSM; and
3. Establish (and increase) new revenue sources to supplement operating costs of the Division of State Parks.

DISCUSSION:

DSP submitted the subject MOA approved by the Board to the Attorney General for review and approval and the response was that the project and relationship appeared to be a concession and warranted a formal bidding process as stipulated under Chapter 102 HRS. However, the Department, through the Board, as head to the head of the agency has the authority to make the determination that this relationship and project qualifies under the sole source exemption under Hawaii Revised Statutes (HRS), Chapter 102-2(b) (10);

“For operation of concessions that furnish goods or services for which there is only one source, as determined by the head of the awarding government agency in writing that shall be included in the contract file”

DSP staff agrees that if this project was a straightforward retail and merchandising operation, an MOA would not have been generated and a request for approval to conduct a formal bidding process would have been presented to the Board for its consideration.

The January 11, 2013 Board submittal reflects that the bidding process was one of the other considered options – **if the intent is to only sell merchandise.** The Board minutes of this meeting reflects concurrence that to provide quality products and enhanced interpretive service was superior to simply generation of new income via the sale of merchandise.

In regards to the bidding process, DSP has the capacity to develop a bidding specification on the sales of a line of desirable products. However, the goal is to enhance the visitor’s experience based on the model PHP has perfected from over 30 years by collaboration with the National Park Service at World War II Valor in the Pacific National Monument (Pearl Harbor). This is a unique service PHP provides, and replication in the marketplace is not available.

While this project is not a procurement of service matter under chapter 103D HRS, the procurement code’s Hawaii Administrative Rule, Chapter 3-122-81 provides guidance as to what a “sole source” means within the context of Chapter 102-2(b)(10): (c): Justification for a sole source purchase must establish that the good, service, or construction has a unique feature, characteristic, or capability essential to the agency to accomplish its work and is available from only one supplier or source.”

The distinctive element in this project is that DSP is interested in an entity that has **both** the interpretive capacity and experience in a globally renowned, high visitation venue with the skill and interpretive products to enhance the visitor’s experience via a variety of methods – and – the ability to design, produce, and then to also sell merchandise that compliments the interpretive elements.

There is an organization similar to PHP in the State entitle Hawaii Pacific Parks Association located on Maui and the Big Island with a comparable relationship with the National Park Service for features on those islands and they have indicated they have no interest in establishing a relationship with DSP for any park features on Oahu.

Therefore, the sole selection of Pacific Historic Parks was based upon several primary reasons:

- “171-43.1 – Lease to eleemosynary organizations. The lands shall be used by such eleemosynary organizations for the purposes for which their charter was issued and for which they were certified by the Internal Revenue Service.” **PHP’s core mission as stated in Exhibit A is the development and implementation of educational and interpretive programs and activity related to its partners sites.** While the merchandising reflects a commercial nature – it is the intent of both PHP and DSP to develop products that provide commemorative souvenirs to visitors and to concurrently develop and enhance the interpretive and service related elements related to DHSM.
- **The over 30 year relationship and history PHP has with the National Park Service at World War II Valor in the Pacific National Monument** – the unique, equally famous, and heavily used historic visitor destination at Pearl Harbor.
- **Concurrently selling merchandise and creating interpretive information including: audio tours, school programs, teacher’s workshops, and the publication of literature and theme related books.** As an example of this collaborative venture – PHP staff are already prepared to immediately translate the current DHSM brochure produced by DSP into Japanese, Chinese, Korean, and other languages as necessary – as they have done at Pearl Harbor. This is independent of the merchandising element and reflects the partnership concept associated with the MOA.
- **The ability of PHP to fund raise via its grant writers and other sources.** The MOA includes a specific identified target of collecting additional funding sources to support the design of a visitor center at a currently being identified location within DHSM. This is unrelated to the merchandising element of the proposed lease – where the MOA is an instrument that defines a broader relationship and varying deliverables. PHP demonstrated this ability in their collaboration on fund raising (over 50 million dollars) with the National Park Service on major re-design and World War II Valor in the Pacific National Monument.

For the reasons cited above, DLNR believes that the goal of DSP to sell merchandise and add to the visitor’s interpretive experience via a lease, coupled with establishing a collaborative relationship via the MOA, renders PHP as being the only entity that has the unique qualifications and experience due to its successful relationship with the National Park Service to fulfill this variety of purpose. DLNR believes that the sole source provision of Chapter 102-2 (b) (10) applies to Pacific Historic Parks.

RECOMMENDATION:

The Board determines that:

1. PHP is qualified as a sole source under the provision of HRS, Chapter 102-2(b) (10) for the operation of the subject kiosk at Diamond Head State Monument.

Respectfully Submitted,



Daniel S. Quinn
Administrator, Division of State Parks

FOR

APPROVED FOR SUBMITTAL:



William J. Aila, Jr.
Chairperson
Department of Land & Natural Resources

Attached: January 11, 2013 Board submittal

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

January 11, 2013

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

SUBJECT: Requesting Approval for the Department of Land and Natural Resources' Division of State Parks to enter into a Memorandum of Agreement (MOA) with Pacific Historic Parks, and to Authorize the Chairperson to Negotiate and Approve a Three Year Lease for a Pilot Project for the Operation of an Interpretive and Merchandising Kiosk in Diamond Head State Monument, Oahu.

Authority: Chapters 171-43 and 184 Hawaii Revised Statutes

BACKGROUND INFORMATION

The Division of State Parks (DSP) has been operating Diamond Head State Monument (DHSM) as a public park since 1977. DHSM is arguably one of the most iconic geologic features in the State of Hawaii and its unique topographic profile has been the subject of countless photographs, movie backdrops, posters, postcards, etc. This remnant volcanic feature is the definitive background of world famous Waikiki. In 2012, visitor patronage oftentimes exceeded 3,000 people per day, making DHSM one of the most heavily visited destinations in the State, along with the Nu'uuanu Pali State Wayside, Hanauma Bay Nature Preserve and World War II Valor in the Pacific National Monument (Pearl Harbor).

DSP has engaged in numerous capital improvement projects at DHSM over the past decade (\$9 M from 2001 to date) including improvements to the park entrance and parking lot, rockfall mitigation for public safety on the summit trail, a new comfort station, stabilization of the historic summit trail and ledge outside the Fire Control Station, lighting the pedestrian tunnel and the spiral staircase along the interior tunnel trail, and a newly completed summit loop trail section. Current CIP funds are being applied to a new exterior linear park, which is of great benefit to the DHSM patronage and the local community for recreation, but will also add to DSP's maintenance responsibility and impact operating budgets.

For several years during the early 1990's, DSP had significant management challenges associated with unauthorized and illicit vendors soliciting t-shirts, water, flashlights for the pedestrian tunnel along the trail, certificates to document the hike, etc. CIP improvements that added lighting to the tunnel have eliminated the need for flashlights, and authorized concessions via vending machines and lunch wagon that sell soda and water has eliminated the demand for these illicit sales/vendors. The promulgation and application of Hawaii Administrative Rules relating to the sale and distribution of

literature has also nearly eliminated the other illicit activities – vastly improving the ambient quality of DHSM and improving the user’s experience. However, there is remnant of this activity in DHSM that is difficult to enforce that on occasion, includes individuals soliciting DHSM patrons for money related to services or products. In addition to its illegality, this activity continues to be a detriment to the overall quality of the experience for DHSM patrons. But, based on the continued presence – it also indicates that DHSM patrons are interested in purchasing souvenirs of their experience. This is also evidenced by private websites that sell products associated with DHSM imagery.

Pilot Project

DSP has been engaged in a series of new revenue generating activities to offset decades of budget cuts and increased operating costs. In relation to DHSM and the issues cited above, DSP has been considering options on how to initiate the following three critical goals:

1. **Eliminate the vestigial illicit vendors and therefore enhance the quality of the visitor’s experience.**
2. **Create a venue to sell and distribute quality DSP souvenir merchandise at DHSM and also to improve the interpretive services at DHSM.**
3. **Increase new revenue to supplement the fundamental operating costs of the Division.**

Methods

1. A Request for Bids to stock and operate the existing and small Interpretive Kiosk inside DHSM has been considered. This would simply involve a solicitation for bids for a concession to sell DSP approved designs for items such as T-shirts, water bottles, certificates, pins, etc. However, while fairly straightforward in execution - this is just basic sales. While this approach would maximize DSP revenue based on a bidding process, it would offer no interpretive element to enhance the visitor experience as they prepare to ascend the trail to the summit or exit the crater. As a new activity in a popular visitor destination, the concession would likely require frequent monitoring by DSP for quality control.

2. For the past several months, DSP has been in dialogue with both Pacific Historic Parks (PHP), a not-for-profit organization which has been operating a gift shop and providing interpretive services at Pearl Harbor for the National Park Service for 33 years, and with the Diamond Head State Monument Foundation (DHSMF) – which has expressed an interest in supporting both DHSM Master Plan development and increased interpretive services in DHSM.

Based on these discussions, evaluating the skill, extensive experience and track record of PHP (Exhibit A), and the desire to establish a high quality enterprise for the iconic DHSM, DSP is now interested in establishing a 3 year relationship with PHP to accomplish the 3 critical goals outlined above.

Attached is a draft Memorandum of Agreement (Exhibit B) with PHP to establish a working partnership and to also establish a template for a three year lease of both the Interpretive Kiosk and ancillary storage space within the crater of DHSM (Exhibit 3) Thus far, the terms proposed for this 3 year pilot project includes that DSP receives 10 percent of PHP gross income and extends no funds to support the creation of the project. PHP will staff the Kiosk, design and purchase all merchandise, create and print and distribute interpretive information approved by DSP (in addition to existing DSP interpretive materials), create an Internet site for online merchandising, and manage other administrative costs associated with the operation of a storefront. PHP and the DHSMF have expressed the interest to create an ancillary MOA between their two organizations whereas a smaller percentage of gross revenue is allocated to DHSMF for the establishment of one additional Interpretive Technician to supplement both DSP and PHP interpretive staff.

While this arrangement is not as robust in terms of gross revenue – the quality and improvement of the visitor’s experience, utilizing the skill and expertise demonstrated by PHP at Pearl Harbor, in addition to their confirmed ability to engage in additional fund raising through grant processes, **makes this partnership a balance between new additional income for DSP and continued improvement of the quality of the visitor experience at DHSM.**

DSP is interested in entering into an MOA with PHP to establish a working relationship, and also enter into a 3 year lease for the operation of the Interpretive Kiosk and ancillary storage space within DHSM, and coordinate with the DHSMF when they have obtained funding, for an additional Interpretive staff position for DHSM.

Chapter 343 – Environmental Assessment:

DSP believes that this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment under Chapter 343, Hawaii Revised Statutes (HRS) and §11-200-8(a)(1), Hawaii Administrative Rules (HAR) and within exemption Class 1, Numbers 2, 3 and 6 of the DSP Exemption List which exempts operations involving negligible or no expansion or change of use beyond that previously existed within park boundaries [February 5, 1976]. The proposed use will be within an existing visitor information/interpretive Kiosk which is designed for and has been used as a point of contact for park visitors and initially, as an entrance fee collection booth.

RECOMMENDATION

The Department is requesting that the Board:

1. Declare that after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS and Chapter 11-200 HAR, this project will have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the Chairperson to execute an MOA with PHP, subject to the review and approval by a Deputy Attorney General.
3. Authorize the Chairperson to negotiate and approve the terms of a 3 year lease with PHP for the management of a merchandizing and interpretive kiosk in DHSM, subject to review and approval by the Deputy Attorney General
4. Authorize the Chairperson to prescribe other terms and conditions as may best serve the interests of the State.

Respectfully submitted,



DANIEL S. QUINN
State Parks Administrator

APPROVED FOR SUBMITTAL:



WILLIAM J. AILA, JR.
Chairperson

Attached: **Exhibit A – PHP Bio**
 Exhibit B – Draft MOA
 Exhibit C - Map of Interpretive Kiosk and storage area

Exhibit A

PACIFIC HISTORIC PARKS

Organizational History

Founded in 1979 and incorporated in the State of Hawaii, Pacific Historic Parks (formerly Arizona Memorial Museum Association) is a non-profit 501(c) (3) organization and a Cooperating Association that works with the National Park Service to support and fund educational programs, museum displays and exhibits, and interpretive programs for the USS *Arizona* Memorial. Over the years, PHP's involvement with the National Park Service has grown and today, they support four National Parks throughout the Pacific: World War II Valor in the Pacific National Monument at Pearl Harbor, Hawaii; Kalaupapa National Historical Park, Molokai; American Memorial Park, Saipan; and War in the Pacific National Historical Park, Guam. Their new name Pacific Historic Parks (PHP) better reflects their scope of support with the National Park Service and provides them the opportunity to expand to other large Parks within Hawaii and the Pacific.

On December 7, 2010, the World War II Valor in the Pacific National Monument (USS *Arizona* Memorial) proudly celebrated the grand opening of the new Pearl Harbor Visitor Center. Pacific Historic Parks led this fundraising effort for eight years, as generous and dedicated supporters came together with many outstanding corporations and concerned government entities to collect the necessary \$56 million. The new Pearl Harbor Visitor Center includes a centralized ticketing desk for all Pearl Harbor historic sites, a new Education & Research Center, a newly designed bookstore, renovated theaters and two museum galleries with state-of-the-art, interactive displays and exhibits. Later an additional \$4 million was raised to add four new parking lots for this destination. The USS *Arizona* Memorial continues to be the most visited destination in the state, with annual attendance of approximately 1.7 million visitors.

Currently Pacific Historic Park employs 68 individuals: 3 at Saipan, 5 on Guam, two at Kalaupapa and the balance at the Pearl Harbor Visitor Center and our corporate offices at Ka Uka, Waipahu. The Board of Directors provides Pacific Historic Parks direction and vision and the CEO/President is responsible for operations. Pacific Historic Park is organized into departments: Education, Membership, Publications, Marketing, Bookstore, Audio, Fundraising, Accounting, and Human Resources.

Mission

Pacific Historic Parks' core mission is the development and implementation of educational and interpretive programs and activities related to its partner sites. The mission of these programs is to promote the understanding, appreciation and preservation of the historical, social, cultural, political, and economic factors related to the history of Hawaii and the Pacific.

Services Provided to Parks

Pacific Historic Parks provides a wide range of activities for its Parks that include:

1- Book and Gift Stores

Pacific Historic Parks operates the book and gift stores in four National Park Service Parks. All merchandise sold in these stores has been preapproved by the Superintendent at each site. Pacific Historic Parks handles all aspects of the gift stores, including product development, buying, warehousing and selling of the merchandise. The largest of Pacific Historic Parks' stores is at Pearl Harbor which generates approximately \$5 million dollars each year. A percentage of net profits from their book and gift stores are given to the Parks in the form of Direct and Indirect Financial Aid, which contributes directly to each Park's interpretive and educational programs.

2- Website Services

Pacific Historic Parks' Webmaster updates information for each Park and maintains the Pacific Historic Site Website. Pacific Historic Parks also operates an online store for the Park sites we represent. In addition, customers use a toll free number for ordering theme related merchandise of each Park.

3- Public Relations, Sales and Marketing Assistance

Pacific Historic Parks' sales and marketing department assists their Parks with public relations, contracting of the audio tour with the travel industry, advertising in Visitor Publications, and representing each Park with the local tour operators, transportation companies, concierges and travel desk networks. Audio tours are available in six foreign languages.

4- Membership Management

Pacific Historic Parks creates and manages its Parks' Membership lists, e-mail updates and quarterly membership mailings. Their membership program allows each of the Parks to raise money annually and to keep our supporters up-to-date on events.

5-Fundraising and Preservation Efforts:

Pacific Historic Parks seeks grants to enhance their education and preservation efforts at each Park. In 2012, PHP is actively seeking donations of \$700K for the refurbishment of the USS *Arizona* Memorial. Additionally, Pacific Historic Parks assisted the National Park Service in Guam with their renovations of the entire War In the Pacific museum exhibits.

6- Special Event Commemoration

Pacific Historic Parks also fundraises and assists each Park for special events and holidays such as Dec 7th in Pearl Harbor and Liberation Day in Guam.

Interpretive and Education Programs:

Pacific Historic Parks provides educational and interpretive services through a variety of efforts: on-site educational tours; publications, interpretive materials; Teacher Workshops; educational outreach and the international Witness to History video teleconferencing program.

1-Audio Tour

In 2011, Pacific Historic Parks introduced a new audio tour at the Pearl Harbor Visitor Center. The new audio tour is narrated by the actress Jamie Lee Curtis and guides visitors through the two new world class museums, The Road to War and The Attack. Designed to complement the intensive historical interpretation found throughout the Pearl Harbor Visitor Center, the audio tour includes interesting historical facts from Park Historian Daniel Martinez as well as oral histories from Pearl Harbor Survivors. A percentage of net profits from the audio tour are given to the Parks in the form of Direct and Indirect Financial Aid, which contributes directly to each Park's interpretive and educational programs.

2- School Programs

The School Visit Program arranges on-site tours and presentations for students of all ages. The visit to the Memorial and its museum has a meaningful impact on students as they experience firsthand what they learn in the classroom. The new National Park Service Keiki and Junior Ranger program booklets for Pearl Harbor were designed and produced by Pacific Historic Parks and enable children of all ages to explore the museum and help them better understand the focus of the park. Pacific Historic Park funds and assists with the educational programs for the schools in Guam and Saipan.

3- Teacher's Workshops

Since 2004, Pacific Historic Parks and the National Park Service have partnered in a Teacher's Workshop. Over the years, hundreds of teachers from around the world have convened in Hawaii to learn more about Pearl Harbor to enhance their classroom curricula.

4- The Witness to History Program

The Witness to History Program utilizes video-teleconferencing to connect classes with Pearl Harbor Survivors, National Park rangers, and historians in Hawaii. The program has received awards including the 2006 American Association of Museums MUSE Award for the use of technology in educational outreach to schools throughout North America and the Pacific.

5- Publication of Literature and Theme Related Books

PHP's Publications and Communications Division creates and publishes newsletters, books, maps and other literature related to the history and events that are pertinent to each of the four Parks.

Summary

For the past three decades, Pacific Historic Parks has had a long and successful track record in assisting National Park Service's Parks with financial aid, operating its gift stores, fund raising, grant writing, membership, special projects and maintaining their interpretive programs. Today Pacific Historic Parks is ready to expand these services to the State of Hawaii Parks and to provide the services needed for the Diamond Head State Monument.

Exhibit B

**MEMORANDUM OF AGREEMENT
BETWEEN
THE STATE OF HAWAII,
DEPARTMENT OF LAND AND NATURAL RESOURCES,
DIVISION OF STATE PARKS
AND
PACIFIC HISTORIC PARKS**

FOR

**THE PLANNING, MANAGEMENT AND OPERATION OF
AN INTERPRETIVE AND MERCHANDISING KIOSK AT
DIAMOND HEAD STATE MONUMENT**

This Memorandum of Agreement (“MOA”) is entered into, by and between the State of Hawaii, Department of Land and Natural Resources, Division for State Parks (DSP) and Pacific Historic Parks (PHP) for the purpose of planning, managing and operating an interpretive and merchandising kiosk (Kiosk) at Diamond Head State Monument (DHSM), Oahu.

ARTICLE I. BACKGROUND AND OBJECTIVES

WHEREAS: It is the purpose and intent of DSP to engage in planning, developing, and managing outdoor recreation areas and the operation, restoration, acquisition, interpretation and maintenance of State parks including historical and archaeological sites, and scenic and natural resources under the jurisdiction of the Division.

WHEREAS: DSP directs investigations and reviews, evaluates and recommends areas for recreational potentials and historical importance; determines standards and priorities for park, outdoor recreation and historic site development projects; directs the planning and conducting of studies to determine trends in park, outdoor recreation and historic site use and public demand; presents submittals and recommendations to the Board.

WHEREAS: DSP establishes and maintains cooperative relationships with Federal, County, State and community organizations, with approval or upon instruction of the Chairperson; represents the department in meeting with civic organizations, government agencies and the general public on matters involving existing or potential state parks, outdoor recreation and historic sites.

WHEREAS: DSP evaluates park locations and other methods to determine appropriate actions to generate new sources of income and funding to enhance park user experience and develop sustainable park operations.

WHEREAS: DSP establishes and maintains a statewide interpretive plan which determines interpretive project priorities and selects parks of high interpretive value, develops interpretive information programs for various parks and/or park features, provides professional expertise in state park interpretive programs provided by the interpreters, including non-profit organizations and volunteers, and monitors these programs for their accuracy, provides general park information to the public, coordinates and oversees the construction and maintenance of interpretive facilities and devices, encourages community/interest groups and organizations to assist in park management and interpretation.

WHEREAS: DHSM has an estimated patronage of 3,000 visitors per day, and a history of illicit sales of various certificates and merchandise, and DSP is now prepared to establish an authorized venue in DHSM and on the Internet to sell DSP approved interpretive merchandise to provide value added products and service to patrons, eliminate vestigial illicit sales, and to generate new income for DSP.

WHEREAS: DSP has a small interpretive Kiosk with adequate adjacent space for the display of merchandise, and is prepared to allow for adjacent containerized space for storage.

WHEREAS: PHP is incorporated as a nonprofit organization with a stated purpose consistent with providing support and assistance to the interpretive, educational, and research activities of DSP and provides interpretive and educational materials to the visiting public.

WHEREAS: PHP has had an Agreement with the National Park Service for 33 years to conduct similar activity at Pearl Harbor (World War II Valor in the Pacific National Monument) and is interested in further collaboration with DSP in order to further effectuate its mission.

WHEREAS: It is the objective of the MOA between DSP and PHP to collaborate in order to provide DHSM visitors with enhanced and value added interpretive and educational materials to facilitate an expanded appreciation of DHSM.

WHEREAS: DSP and PHP, subject to approval by the Board of Land and Natural Resources, agree to execute a three (3) year Lease to effectuate these goals.

ARTICLE II. AUTHORITY

Hawaii Revised Statutes (HRS) Chapter 184
Hawaii Revised Statutes (HRS) Chapter 171

ARTICLE III. STATEMENT OF WORK

This MOA is to encourage and promote a new and cooperative relationship between DSP and PHP and establish the parameters that will be incorporated into a Lease for a merchandising

operation at the interpretive Kiosk at DSHM and to enable future cooperative relationships if or when they are warranted or may develop over the span of the next 3 years.

A. DSP AGREES TO:

Promote a sustainable business environment. This means DSP will (1) provide reasonably stable and reliable conditions in which PHP can operate effectively; (2) communicate, on a regular basis and in a timely manner, DSP operating plans that may affect PHP operations; (3) encourage innovation and new product lines that are within the Scope of Sales and that support the DSHM's interpretive mission; (4) streamline processes; and (5) be sensitive to sound PHP business practices.

Planning

1. Meet to identify and come to mutual agreement on priorities for the upcoming 3 years, evaluate progress toward achieving shared strategic goals, and clarify and implementing a process to identify and come to a mutual understanding on how to resolve potential problems in the relationship between DSP and PHP.
2. Mutually evaluate and discuss the need to consider an alternative space should the Kiosk become insufficient as a venue to support the sales of merchandise and detract from the visitor experience.
3. Execute a three (3) year Lease

Sales Activities

4. Collaboratively develop a required park-specific Scope of Sales statement between each park and PHP. Where there are both PHP and a concession operator(s), the DLNR must consider the contractual rights of the concession operator(s) when approving the Scope of Sales statement.
5. Approve, in writing, all PHP sales items sold based on appropriateness, park theme, audiences, interpretive value, accuracy, price points, and quality. Sales items may not encourage or depict inappropriate activities in parks, nor direct visitors to resources in closed areas. The DSP is the approving official.
6. Through the DSP periodic review of PHP sales activities, DSP will to ensure that DSP interests are addressed.

Interpretive Activities

7. Define the role of the PHP in providing interpretive activities in support of the DSP's mission.

8. Develop clear guidelines and standards for assessing the quality and nature of interpretive activity proposals.
9. Be involved in the planning, approval, training, monitoring and evaluation of all activities authorized under this Agreement.

Facilities, Equipment, and Construction

10. Provide PHP with a suitable sales area and other facilities to enable PHP to conduct business. Reserve the right to relocate, amend or withdraw any such facilities (upon reasonable notice) in order to meet the needs of the DSP. Sales operations within DHSM will occur only in the sales areas designated by the lease.
11. Develop a maintenance and operations plan with the PHP for facilities assigned to PHP.
12. Reserve the right to conduct inspections of provided facilities whenever the DSP deems appropriate or necessary.
13. Provide PHP with general maintenance, repair service and utilities of the Kiosk.

Donations, Fundraising, and Aid to DSP

14. Apply a reasonable and prudent process that is in the DSP's best interest for PHP to fundraise for the benefit of the DSP. As an example, PHP will pursue grants for a Visitor Center within the DHSM, will be the first project initiated by PHP.
15. Consider for acceptance all single donations, or a planned series of donations, of money and/or in-kind goods or services to DSP.
16. Follow reasonable and prudent process with respect to cause-related marketing.
17. Use "Aid to DSP" to support the interpretive, educational, scientific, and historical projects and programs that the DSP determines are needed and are consistent with its mission.
18. Recognize PHP for programs, projects, and publications funded by PHP.
19. Determine jointly with PHP the appropriate level of aid to DSP based upon the nature and extent of PHP activities and the needs of DSP.
20. Complete in a timely manner PHP donated and funded projects, with funding accountability to PHP, and a report as defined by PHP upon request. Where PHP policy allows unused funds to be carried into a new fiscal year and DSP chooses to carry these

funds into a new fiscal year, the DLNR must notify PHP in a timely manner of its intent to use those funds in future years.

B. PHP AGREES TO:

Policy, Authorities, Agreement

1. Comply with the policies set forth in the MOA and Lease.
2. Possess a signed MOA to operate in DHSM or when acting in its capacity as a partner selling goods and services outside the State Park System, including Internet sales.
3. Provide training and assistance, when appropriate, for activities that the DSP does together with PHP.

Working with DSP

4. Notify DSP of PHP board of directors meetings. PHP is encouraged to invite appropriate DSP representatives to board meetings and to appropriate committee meetings.
5. Authorize its employees to undertake no government functions or activity on behalf of DSP beyond routine visitor information services unless specifically authorized by DSP.
6. Allow PHP employees, when determined eligible, to serve as Volunteers-in-Parks (VIP) to perform park projects (i.e., park clean-up) under the supervision of DSP employees. Such volunteers' time should be counted as DSP VIP hours and not reported as PHP "Aid to DLNR" on the annual report submission.
7. Require that PHP employees who engage in public contact wear a distinctive uniform or other indication of their role as a partner which clearly distinguishes them from DSP employees. PHP employees may not wear the DLNR or other government uniform.

Sales Activities

8. Assure that PHP sales support the purposes of PHP as stated in their articles of incorporation.
9. Operate only in the sales areas designated by the DSP in the Lease.
10. Collaboratively develop a required park-specific Scope of Sales statement with DSP
11. Obtain written approval for all sales items sold under the MOA.

12. Display a sign at sales locations that identifies the sales outlet as a non-profit activity of the DSP approved and authorized entity for the DHSM. The sign will include an explanation that PHP aids the DLNR by supporting park interpretive, educational, historical, and scientific activities.
13. Inform DSP when considering operating an off-site sales outlet for another governmental entity.
14. Submit a complete list of sales items to the DSP staff for annual review and written approval.
15. Sell only approved items that do not violate the conservation principles of the DSP.
16. Conform to DLNR donor recognition guidance for corporate sponsorships appearing in items produced for sale by PHP. Items must not contain advertising for a business, brand, product or DLNR.
17. Assure that paid advertising in sales items (i.e., journals with advertising) must be incidental to the interpretive value or message of an item. Advertising or vendor information may not imply endorsement by the DLNR.
18. Abide by any additional terms as stipulated in a Lease

Interpretive Activities

19. Operate the sales area within a park only in the sales areas designated by the DSP and the Lease. A list of locations within a park that the DSP designates for PHP use must be attached to the Lease. PHP will retain copies of the facility assignment(s).

ARTICLE IV. TERM OF MOA

The MOA will be effective for a period of three years from the date of final signature unless it is terminated earlier by one of the parties in accordance with the terms of the MOA. The MOA may be renewed for an additional three-year period that is concurrent with the Lease and upon written agreement of the parties prior to expiration. The MOA may be modified and revised with mutual agreement by both parties.

ARTICLE V. KEY OFFICIALS

These are not the signing officials of this MOA, but are the contact officials for this MOA.

DSP Daniel Quinn,
 Administrator

PHP Brad Wallis,
 President/CEO

ARTICLE VI. LIABILITY

PHP shall:

- (A) Procure comprehensive general liability insurance from a responsible company or companies with a minimum limitation of One Million Dollars (\$1,000,000) per person for any one claim, and an aggregate limitation of Three Million Dollars (\$3,000,000) for any number of claims arising from any one incident. The policies shall name the State of Hawaii as an additional insured, shall specify that the insured shall have no right of subrogation against the State of Hawaii for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the Cooperating PHP shall provide the DLNR with confirmation of such insurance coverage; and
- (B) Pay the State of Hawaii, DSP, the full value for all damages to the lands or other property of the State of Hawaii caused by such person or organization, its representatives, or employees; and
- (C) Indemnify, save and hold harmless, and defend the State of Hawaii against all fines, claims, damages, losses, judgment, and expenses arising out of, or from, any omission or activity of such person, organization, its representatives, or employees.

ARTICLE VII. SUSPENSION AND TERMINATION

DSP reserves the right to suspend the MOA when, in the DSP's sole judgment, suspension is necessary to prevent fraud or malfeasance, to protect public health and safety, or to prevent harm to DSP resources.

If either party fails to observe any of the terms and conditions of this MOA the other party may terminate this MOA for cause. Prior to termination, a written notice must be given of the alleged breach with a cure period provided to address the alleged breach. Should the recipient party fail to take appropriate action to cure the breach, then a thirty (30) days written notice of termination may be given, or such other alternative action agreed to by the parties.

The DSP may terminate this MOA for the convenience of the government, at any time. To the extent practicable, before the DSP terminates for convenience, DSP agrees to evaluate its relationship with PHP including consulting with PHP board chair, and determine that termination of the Agreement is in the best interest of the State of Hawaii. PHP shall receive written confirmation of the termination within 5 working days following the termination.

ARTICLE VIII. REQUIRED CLAUSES

A. **NON-DISCRIMINATION:** The parties shall abide by the provisions of Executive Order 11246, as amended; shall be in compliance with the requirement of Title VI of the Civil Rights Act of 1964, as amended (78 Stat.252; 42 U.S.C.§2000d et. seq.); Title V, section 504 of the Rehabilitation Act of 1973 (87 Stat. 394, 29 U.S.C. §794, as amended), the Age Discrimination Act of 1975 as amended (89 Stat. 728; 42 U.S.C. §6101); and with all other federal laws and regulations prohibiting discrimination on the grounds of race, color, national origin, disability, religion, or sex in employment and in providing our facilities and DLNRs to the public.

B. **SEVERANCE OF TERMS AND COMPLIANCE WITH APPLICABLE LAW:** The parties shall comply with all applicable laws and regulations. This MOA is subject to all laws, regulations and rules governing DSP administered property, whether now in force or hereafter enacted or promulgated. Nothing in the MOA shall be construed as in any way impairing the general powers of the DSP for supervision, regulation, and control of its property under such applicable laws, regulations and rules.

If any term or provision of this MOA is held to be invalid or illegal, such term or provision shall not affect the validity or enforceability of the remaining terms and provisions. Meeting the terms of this MOA shall not excuse any failure to comply with the Lease and all applicable laws and regulations, whether or not these laws and regulations are specifically listed herein.

ARTICLE IX. SPECIAL PROVISIONS

None

ARTICLE X. AUTHORIZING SIGNATURES

Approved as to Form

Deputy Attorney General

Agreed between the parties this ___ day of _____ 20_____.

**STATE OF HAWAII
DEPARTMENT OF LAND AND
NATURAL RESOURCES**

PACIFIC HISTORIC PARKS

Chairperson, Board of Land and Natural Resources

Chairperson, Board of Directors

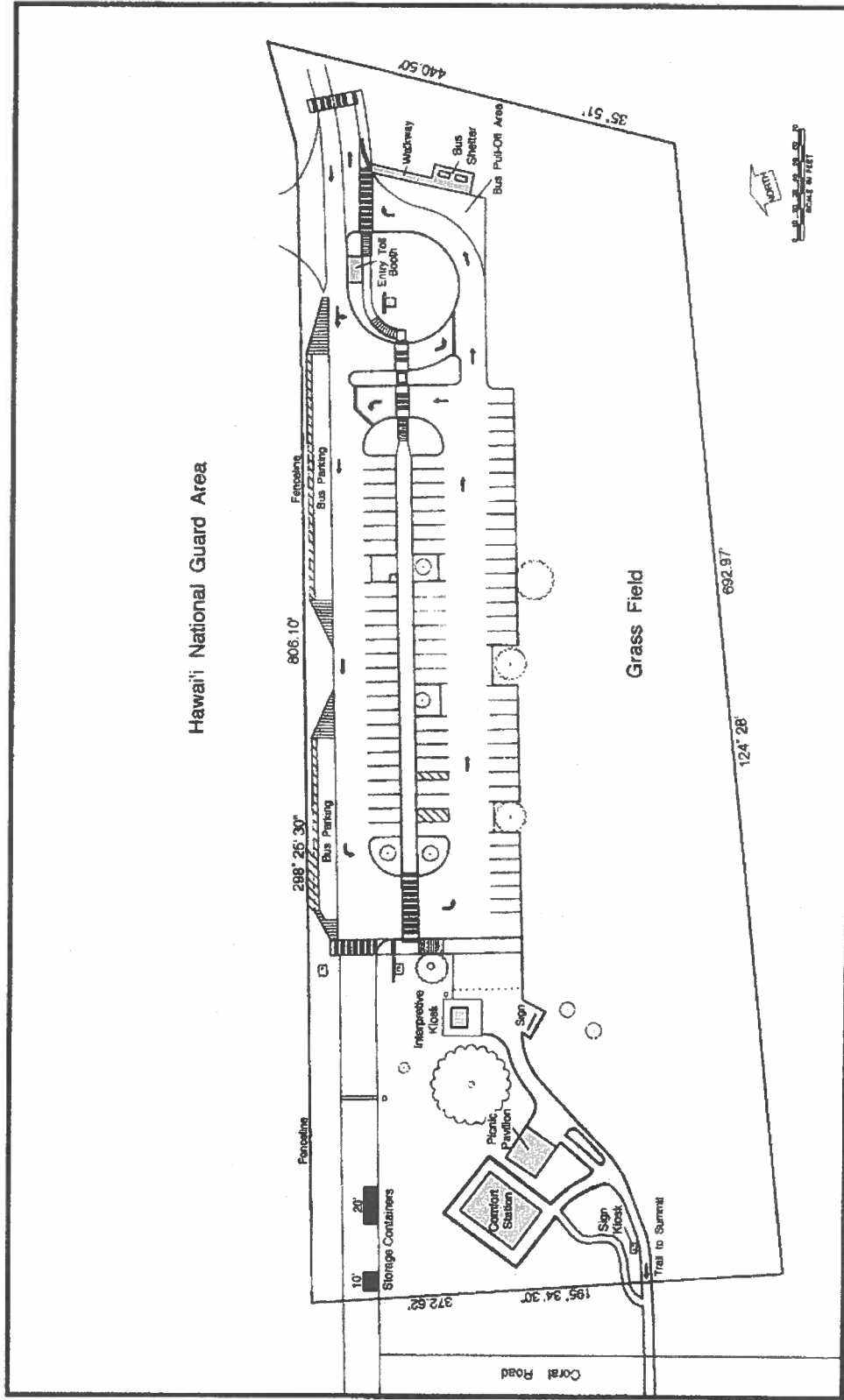


EXHIBIT C
 Map of the visitor entry area of Diamond Head State Monument showing the location of the interpretive kiosk and storage containers.