

STATE CONCESSION AGREEMENT NO. DOT-A-13-_____

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
AIRPORTS DIVISION

CONCESSION AGREEMENT
FOR
THE MANAGEMENT AND OPERATION OF
THE AUTOMOBILE
PARKING FACILITIES
AT
KAHULUI AIRPORT AND
KAPALUA-WEST MAUI AIRPORT
KAHULUI AND MAHINAHINA,
ISLAND OF MAUI

ADDENDUM NO. 1

05-10-13

W. “Environmental Laws” means all federal, State of Hawaii, and local laws of every nature including statutes, ordinances, rules, regulations, codes, notices, standards, directives of every kind, guidelines, permits, licenses, authorizations, approvals, interpretations of the foregoing by any court, legislative body, agency or official, judicial decisions, judicial and administrative orders, rulings or judgments, or rules of common law which currently are in effect or which may come into effect through enactment, issuance, promulgation, adoption or otherwise, which in any way pertain to, relate to, or have any relevance to the environment, health or safety. These environmental laws include, but are not limited to, regulations and orders of the EPA and of the DOH.

X. “Environmental Preservation Guidelines” means the manual (Attachment 3) prepared by the State which details the policies and procedures applicable to the decor of tenant improvements at the Airport visible to the public, including any subsequent amendments thereto adopted by the STATE.

Y. “EPA” means the U.S. Environmental Protection Agency, or its successor agency.

Z. “FAA” means the Federal Aviation Administration, or its successor agency.

AA. “Governor” means the Governor, State of Hawaii, or his/her designated representative.

BB. “Guests” means licensees, permittees, Airport tenants, Airport employees, vendors, visitors, providers of utilities and other services, customers, invitees and patrons.

CC. “HAR” means Hawaii Administrative Rules.

DD. “Hazardous Substance” means any chemical, substance, radioactive materials, organic or inorganic material, controlled substance, object, condition, waste, living organism, or combination thereof which is, may be, or has been determined by State of Hawaii or federal authority under any Environmental Laws to be hazardous to human health or safety or detrimental to the environment. This term includes, but is not limited to, petroleum hydrocarbons, asbestos, radon, polychlorinated biphenyls (PCBs), methane, fuels of any kind, and other materials or substances that are, or may in the future be, regulated by State of Hawaii or federal authorities.

EE. “HRS” means Hawaii Revised Statutes.

FF. “Improvements” means any and all buildings, structures, attachments, fixtures, equipment and articles permanently affixed or firmly embedded or fastened to land, buildings or other structures at the Airport.

GG. “Land Board” means the Board of Land and Natural Resources of the State of Hawaii.

3. Operational Data Reports. In addition to the Gross Receipts Reports referenced above, the Operator, at Operator's own expense, shall submit to the State on or before the twentieth (20th) day after the close of each calendar month of the term hereof, including the twentieth (20th) day of the month following the end of this Contract by expiration or sooner termination, at the place fixed by the State for payment, those other written statements as required by Attachment 8 hereto, which is incorporated by reference herein and is subject to change from time to time at the State's sole discretion without formal amendment hereto. Such written statements shall be certified as correct by the Operator, or by a person duly authorized by the Operator to so certify.

4. Disadvantaged business enterprise monthly reports. If Operator is not a certified DBE, but procures, purchases, or enters into contracts with certified DBEs for the provision of goods and services relating to the operation and maintenance of the Concession, the Premises, or the Automobile Parking Facilities at the Airport, Operator shall submit to the State on or before the twentieth (20th) calendar day of each and every month following the preceding month throughout the term of this Contract, including the twentieth (20th) consecutive, calendar day of the month following the end of the Contract whether by expiration or sooner termination, an itemized statement or report listing the following specific information: (1) the names of all DBE vendors, suppliers, providers, or contractors of goods or services; (2) the dates of the billings, invoices, or bills of sale; (3) detailed descriptions of the goods or services furnished or provided to Operator by DBEs; and (4) the value or consideration paid by Operator to each DBE for such goods and/or services.

5. Reporting Form and Style. The written statements referred to herein shall be in such form and style and contain such details and breakdowns as the State may require. The State reserves the right to require that any or all such reports be submitted to the State in electronic format compatible with software utilized by the State, as disclosed to Operator prior to commencement of this Contract. The State will consult with the Operator at least thirty (30) days in advance of any changes in or to the electronic format of the reports to be submitted by the Operator.

6. State's Right to Prepare. Without prejudice to any remedies herein provided for such default, after seven (7) days' advance written notice to the Operator, if the Operator shall fail to promptly furnish any monthly or annual report or statement required hereunder, the State may have any such report or statement prepared on the Operator's behalf by an accountant to be selected by the State, at the sole cost and expense of the Operator. The Operator shall furnish to such accountant all Records requested for the purpose of preparing such reports, and the Operator shall pay immediately to the State, upon notice from the State, all expenses incurred by the State in securing and obtaining such Records and having such reports or statements prepared.

7. Estimate of Percentage Fees. In the event that Records have not been prepared and kept in accordance with the provisions set forth herein, the State may make

period in which this Contract is or was in effect, and which are unpaid at the time of any such expiration or termination.

5. Pro Rata Payment. If this Contract terminates without fault of Operator on any day other than the last day of any calendar month, the applicable Concession Fee, Premises rent, and utility fees for said month shall be paid pro rata in the same proportion that the number of days this Contract is in effect for that month bears to the number of days in that month.

B. Additional Charges. In addition to the right of the State to charge and collect, upon demand, interest charges as provided in Article VI.I.3. (Interest Charges on Delinquent Accounts) of this Contract, or to terminate this Contract pursuant to Article XXI. (Termination by the State) hereof, the State may levy on and collect from the Operator a charge of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per day, paid in legal tender of the U.S. for each and every day the Operator is in violation of any of the agreements, covenants, promises, provisions, requirements, reservations, restrictions, stipulations, terms, or conditions of this Contract; provided, however, that there shall be no levy unless the violation(s) continues beyond the period specified in Article XXI. (Termination by the State) hereof, for remedial actions(s); and provided further that separate charges may be levied by the State for violations of separate provisions by the Operator even though the violation(s) may be concurrent. Payment of the additional charges by the Operator shall be due and payable to the State on demand, and shall bear interest when not paid at the same rate and in the same manner as for other delinquent accounts, as prescribed and set forth in Article VI.I.3. (Interest Charges on Delinquent Accounts) of this Contract.

C. Liquidated Damages. If the Operator fails to properly provide the services described in this Contract, or to perform all or any part of the Operator's obligations herein within the time specified and agreed upon, and if such delay in performance is not excusable or does not arise from acts of God, fires, labor disputes, accidents, or other similar causes which are deemed by the State to be beyond the Operator's control, the parties mutually agree that the State will be damaged thereby, but that the amount of such damage would be difficult, if not impossible, to ascertain or prove. Therefore, the parties mutually agree that, for each category of violation shown below in this Article VI.K. (Liquidated Damages) that occurs within a thirty (30) day period, the State shall first provide a written warning to the Operator, and thereafter for each subsequent day that the violation persists within the same thirty (30) day period the Operator shall pay to the State, in addition to the other payments due under this Contract, the following amounts as liquidated damages and not as a penalty:

1. Staffing at Exit Booths. Unless otherwise approved by the State based on Operator's explanation of facts beyond its control that caused the failure, the Operator shall pay to the State the amount of TWO HUNDRED FIFTY AND NO/100 DOLLARS (\$250.00) per hour or fraction thereof for each incident or occurrence, wherein the patrons' average wait in line to exit from the Automobile Parking Facilities over any hour-long period, exceeds three (3) minutes.