

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS (CNMI)  
OFFICE OF THE GOVERNOR  
DEPARTMENT OF PUBLIC LANDS (DPL)**

**RFP18 – RED002  
SUBMISSION DEADLINE: July 23, 2018**

**“MANAGAHA ISLAND MASTER CONCESSION OPERATOR”**

Governor Ralph DLG. Torres and Lt. Governor Victor B. Hocog, through the Department of Public Lands (DPL), are soliciting sealed proposals from qualified firms interested in being the exclusive master concession operator for service and activities on or relating to Managaha Island.

The RFP instruction and information package (RFP Packet) is available at the DPL office, located on the 2<sup>nd</sup> Floor of the Joeten Dandan Building, Saipan, during the hours of 7:30am to 4:30pm, Monday through Friday, except holidays. If a hardcopy is preferred, a charge of .50 cents per page will be assessed, however, the full package of the RFP is available to download at [www.dpl.gov.mp](http://www.dpl.gov.mp) or can be emailed to anyone interested at no cost. Interested proposers from overseas may request an RFP Packet by email reference **“RFP18-RED002 MANAGAHA CONCESSION”**.

Questions from proposing firms regarding the premises and the contents of the RFP Packet must be received, **no later than 4:30 pm on June 29, 2018 ChST** and must be submitted in writing via mail, email or facsimile to Ms. Marianne Concepcion-Teregeyo, Secretary, DPL at the following address:

Department of Public Lands  
P.O. Box 500380  
Saipan, MP 96950  
Telephone number(s): (670) 234-3751/52/53  
Facsimile number: (670) 234-3755  
Email: [mariannet@dpl.gov.mp](mailto:mariannet@dpl.gov.mp)

Sealed proposals must be marked **“RFP18-RED002 MANAGAHA CONCESSION”**. One (1) original and five (5) copies of sealed proposals must be submitted to the DPL at its address above **no later than 4:00pm ChST, on - July 23, 2018**.

By submitting a proposal, the interested firm agrees to enter into a concession agreement in the form attached to the RFP Packet as Exhibit E. DPL reserves the right to reject any or all proposals and to waive any imperfection in any proposal, if, in its opinion to do so would be in the best interest of public land beneficiaries. All costs associated with preparing a proposal are entirely the responsibility of proposers. All proposals shall become the sole property of DPL.

/S/ Marianne Concepcion –Teregeyo  
Secretary, DPL

**REQUEST FOR PROPOSALS  
FOR  
MASTER CONCESSION OPERATOR**

**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
DEPARTMENT OF PUBLIC LANDS**



**RFP18 – RED002**

**RFP INFORMATION PACKET**

**INTRODUCTION AND GENERAL BACKGROUND**

The Commonwealth of the Northern Mariana Islands (CNMI) Government’s Department of Public Lands (DPL) is inviting proposals in support of its fiduciary duty to select a firm that is most capable of providing DPL the highest return from the use of certain public lands described under the Description of Premises section of this RFP information package.

DPL serves as the trustee of public lands and is responsible for the administration, use, leasing, development, and disposition of all public lands in the CNMI. In line with its responsibilities is the duty to maximize financial returns from the use of public lands. The agreement with our present concessionaire expired on August 31, 2016 and DPL must make a decision, consistent with its fiduciary duty to its beneficiaries, to enter into a new concession agreement on the most favorable terms to DPL that the market will bear.

This RFP does not commit the CNMI or DPL to award a contract or pay any costs incurred in the preparation of the proposal or attendance at meetings with CNMI or DPL staff.

**DESCRIPTION OF PREMISES**

The island of Managaha, in general, and the Exclusive Concession Area (ECA) containing an area of approximately 11,203 square meters, more or less, are hereinafter referred to as the Premises. An overview of the Premises is attached as Exhibit A. A description of the ECA is shown in Exhibit B. Also attached is Exhibit D, which is a current inventory of the facilities and equipment on the Premises.

Interested firms should note that all requirements by law and other government agencies apply. The successful proposer will be responsible for obtaining any and all necessary approvals, permits, and licenses for any construction and lawful operation of the concession.

**OBJECTIVE:**

The principal objective of this RFP is to secure a Master Concession Agreement with the most responsive firm, or a consortium of firms under one agreement, capable of providing DPL the highest rent from sales relating to transportation to and from the Premises, marine sports, recreational activities, food, and souvenirs, while providing high quality, consistent maintenance of the Premises as part of a viable operation. An additional objective is to have an operation that will make significant improvements to the feel of the Premises and provide convenience for residents. Interested firms should note that all requirements by law and regulations apply and it is their responsibility to know and ensure the operations in its proposal comply.

DPL will only consider proposals that include, at a minimum, the activities listed in the General Description of the Master Concession Agreement below. Projections for Business Gross Receipts must include the sales from these activities, including transportation to and from the Premises, package tours for marine sports activities, including sales that relate to the Premises but occurred outside of the Premises, and all other sales that occur within the Premises. For purposes of this RFP, DPL is seeking a proposal from one, or a combination of firms acting as one, that provide the greatest overall benefit to DPL based on the evaluation and selection criteria of this RFP.

## **MASTER CONCESSION AGREEMENT**

### **General Description**

A draft Master Concession Agreement containing the basic minimum terms of the eventual agreement is attached as Exhibit E and is part of this RFP. By submitting a proposal, the interested firm agrees to enter into a concession agreement in the form attached as Exhibit E. DPL proposes to grant the successful proposer the right, privilege, and duty to develop, equip, operate, and maintain a vibrant exclusive concession, including the maintenance and operations of existing facilities on the Premises, for the purpose of generating revenues from the sale of marine sports, recreational activities, food, and souvenirs on the Premises. Such activities include, but are not limited, to the following:

1. Transport visitors to and from the Premises;
2. Prepare, deliver, sell, and provide food and/or beverages on the Premises for all persons who desire to purchase the same;
3. Rent or sell water sports equipment, recreational equipment, or beach equipment and related supplies;
4. Conduct of tours on the Island and from the Island;
5. Sale of goods on the Island; and
6. Operate surface and underwater activities, such as parasailing, banana boat rides, pedal bikes, power boat lagoon cruises, windsurfing, canoe rentals and tours, and kayak rentals, SCUBA, SNUBA and similar tours.

The interest given to the Concessionaire shall not exclude the general public from the Premises or restrict third parties from providing transportation to and from the island; however, use by the general public and third parties is limited by the terms and conditions of the interests granted in the Master Concession Agreement.

### **Condition of the Premises**

The Concessionaire shall acknowledge and accept the Premises and inventory "AS IS" in its existing condition on the date the Master Concession Agreement, and that DPL makes no warranties, express or implied, and shall not be obligated to make any alterations, additions, or betterments to the Premises except as otherwise provided for in the Master Concession Agreement.

### **Term**

The term of the Master Concession Agreement shall be for a period of five years (5) with an additional five (5) year option to renew at DPL's sole discretion.

### **Rent**

Minimum annual rent amount shall be as the following:

- I. \$300,000 per year (or greater as bid), **PLUS**

**DPL**

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- II.** 3.00% of Business Gross Receipts (BGR) from all sales generated relating to the Premises (or greater as bid).

**Reimbursable Costs**

Concessionaire is required to maintain Managaha Island at its expense with certain expenses being reimbursable by DPL. Exhibit C, Summary of Expenses, provides an example of past annual expenses over a five year period. Reimbursement rates for certain expenses are as follows:

<u>Expense Category</u>	<u>Reimbursement Rate</u>
1. Maintenance of improvements outside of the Exclusive Concession Area (ECA) including pathways, pavilions, bbq pits -	100%
2. Janitorial and landscaping outside of ECA -	100%
3. Maintenance of infrastructure and equipment throughout the island including power generation and distribution, water production and distribution, wastewater/sewage treatment and disposal -	100%
4. Fuel and Lube costs to run generators -	50%
5. Janitorial and landscaping within the ECA -	50%
6. Property Insurance - fire and damage (including typhoon and vandalism) with extended coverage endorsements, jointly in the names of the concessionaire and DPL, (all buildings, equipment, and fixtures)	100%
7. Night Security (public safety & protection of buildings, equipment, & fixtures)	100%
8. Lifeguards (throughout the island)	100%

**REQUIRED CONTENT AND LAYOUT OF PROPOSALS**

The proposal must contain information in the order listed below. Proposers who do not follow these guidelines or submit incomplete information may be disqualified.

**1. Identification & Background Information**

- a. A cover letter signed by a member of the firm authorized to commit the firm to a contractual arrangement with the Department of Public Lands and the CNMI.
- b. Firm’s name, email address, business postal address, contact name, telephone and fax number(s).
- c. Provide a copy of firm’s Certificate of Incorporation and current business license.
- d. Provide a brief history of the firm including: organization, size and office locations. Specify the office location where the work associated with the project would be performed.
- e. Describe your firms existing operations including how sales are generated, types of goods or service sold, facilities, and management approach.

**2. Personnel**

- a. Provide your firm organizational chart, identifying key contact persons/people who will be responsible for regular communication with DPL.
- b. If affiliate companies will be involved in providing concession services, describe its relationship with the proposing firm and the role of the affiliate in providing services under the Master Concession Agreement.

### **3. Experience and Equipment**

- a. Must have at least ten years of direct experience in managing/operating an island concession and facility similar to Managaha. Experience must be recent, at most within the past two years.
- b. Must have direct experience with operating and maintaining self-contained infrastructure systems including water purification, proper sewage treatment and disposal, and power generation.
- c. Describe your firm's experience in the sale of and providing the services for activities listed in the Master Concession section above and related activities.
- d. Describe experience and approach in complying with environmental regulations applicable to a Managaha concessionaire including those imposed by US Federal and CNMI laws.
- e. Describe your safety policies associated with the experience shown for items 3.a. and 3.b. above.
- f. List the existing marine sports and recreational activities and concession services your firm provides.
- g. List and describe equipment, boats, and facilities currently owned and operated by the firm.
- h. List and describe additional equipment, boats, or facilities the firm proposes to acquire to maximize its capabilities in providing services / activities and the estimated acquisition costs.

### **4. Financial Resource and Requirements**

- a. Explain the method of financing operations (i.e., self-financing, bank loans, etc.) and explain firm's capability to borrow, form joint venture with others, or obtain a bank loan.
- b. Provide verifiable proof of availability of development funds and certify that the firm has cash available to support six months of working capital needs for the proposed operations.
- c. Submit financial statements (balance sheet, Profit and Loss, and Cash Flow) for each year from 2013 through 2017, management statements acceptable, CPA audited statements preferred.

### **5. Proposed Operations and Financial Projections**

- a. Describe your understanding of operating the facility, infrastructure, and equipment.
- b. Provide a detailed business plan of your proposed operations under a Master Concession Agreement incorporating your understanding of the requirements of this RFP including the following:
  - i. Work plan schedule, including anticipated start date and ramp-up of services
  - ii. Proposed services/activities to be provided by firm
  - iii. Pricing schedule for each service/activity
  - iv. Proposed approach for the maintenance of the Premises
  - v. Proposed minimum rent above and in excess of the minimum stated above
  - vi. Proposed rent as percentage of BGR in excess of the minimum stated above
  - vii. Proposed benefits to be conferred by concessionaire to the public.
- c. Five-years pro-forma financial statements showing the following:
  - i. Anticipated gross revenues and operational costs
  - ii. Assumptions supporting revenue projections
  - iii. Annual working capital needs in each year
  - iv. Estimated rent as a percentage of BGR for each year
  - v. Certification by firm that the pro-forma financial statements are reasonable and achievable

### **6. Others**

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- a. Disclosure of any potential conflict of interest and / or any ongoing litigation that might affect firm’s ability to carry out its operations.
- b. Describe efforts concessionaire will undertake to increase sales levels while preserving the number of visitors to Managaha from the CNMI’s four primary sources (Japan, Korea, Russia, and China), and efforts to increase the number of visitors from declining markets such as Russia and Japan.

Interested parties may view the premises at any time during regular operating hours without interfering with existing activities. A pre-proposal tour of the island for all interested parties will be held on Managaha Island **June 22, 2018 at 1:00 p.m.** Interested parties must arrange their own transportation to and from the island and are not exempt from the \$5.00 landing fee imposed on all non-residents.

Questions from proposing firms regarding the premises and the contents of the RFP Packet must be received, **no later than 4:30 pm on June 29, 2018, ChST** and must be submitted in writing via mail, email or facsimile to Ms. Marianne Concepcion-Teregeyo, Secretary, DPL at the following address:

Department of Public Lands  
P.O. Box 500380  
Saipan, MP 96950  
Email: [mariannet@dpl.gov.mp](mailto:mariannet@dpl.gov.mp)

Questions and DPL’s answers will be shared with all proposing firms in a Q&A format. Please note that this forum is intended to provide proposing firms an opportunity to obtain clarification on the RFP. The RFP will not be amended in response to the questions.

Sealed proposals must be marked “**RFP18 – RED002” Managaha Concession**. One (1) original and five (5) copies of sealed proposals must be submitted to the DPL at its address above **no later than 4:00pm ChST, July 23, 2018.**

**EVALUATION CRITERIA**

Proposers will be evaluated based on the submission of a complete proposal as listed in the content and layout of proposals section of this RFP taking the following into consideration:

1. 30% - Rent payment amounts to DPL in terms of dollars and percentage points in excess of the minimums stated above proposed by firm.
2. 20% - Firm’s financial capability to carry out plans to operate.
3. 20% - Firms experience in directly managing/operating a similar concession and approach in executing proposed plans.
4. 15% - Firm’s marketing plans, operational capability and readiness to assume the duties of the master concessionaire (i.e. timeline to start operations, ability to maintain the Premises).
5. 15% - Proposals that provide public benefits (improvements, support for cultural events, local discounts, etc.) in addition to the mandatory transportation requirement set forth in the specimen concession agreement.

Interviews may be conducted with the top two (2) ranked firms to discuss the proposal submitted if DPL deems the two proposals to be similarly advantageous to DPL.

DPL

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**IMPORTANT INFORMATION TO PROPOSERS**

All proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offer. In conducting discussions, there shall be no disclosure of any information derived from any of the competing proposals submitted.

All responses to this RFP should take into account any and all taxes, including excise tax, or fees which will be the obligation of the company or individual awarded the concession agreement.

In the interest of full disclosure, the CNMI Legislature has on several occasions proposed to statutorily restrict DPL from collecting the Managaha landing fees assessed on each nonresident visitor to the island. The most recent attempt is House Bill 19-109. While DPL has taken the position that the other uses proposed by the Legislature are not allowed by the Constitution, should DPL no longer be able to collect the landing fees, rent amounts would need to be adjusted. If DPL and the Concessionaire are unable to mutually agree to changes to the Master Concession Agreement to account for changes to the Managaha landing fee, DPL may terminate the Concession Agreement in its sole discretion and without recourse from the Concessionaire.

DPL is in the process of proposing regulations for the following and bidders should factor any costs of providing services that meet these proposed amendments in their bid proposals:

- a) To allow it to charge a \$5.00 User Fee charge for all nonresident visitors to Managaha. For the sake of clarity, the User Fee shall be assessed to all visitors required to pay the \$5.00 Landing Fee; and
- b) Require the Concessionaire to provide lifeguards throughout Managaha during normal operating hours.

**Exhibit A**  
Managaha Island  
Aerial View





**Exhibit C**  
Summary of Expenses

<b>DPL - Managaha Summary of Operating and Maintenance Expenses</b>							
<b>EXPENDITURES</b>	<u>2016</u>	<u>2015</u>	<u>2014</u>	<u>2013</u>	<u>2012</u>	<u>Cumulative</u>	<u>Annual Average</u>
	<b>Construct, Maintaince, Repair</b>						
Public Facilities	\$ 16,073	\$ 13,647	\$ 16,615	\$ 9,689	\$ 11,950	\$ 67,975	\$ 13,595
Improvements	56,264	197,957	540,168	507,846	107,378	1,409,613	281,923
Equipment and Infrastructure							
Power	30,094	31,920	30,655	30,750	33,544	156,963	31,393
Water	80,459	212,762	61,663	33,959	37,936	426,779	85,356
Sewage	116,989	118,516	101,211	96,906	66,792	500,414	100,083
<b>Sub-Total</b>	<b>227,542</b>	<b>665,500</b>	<b>853,833</b>	<b>760,324</b>	<b>432,635</b>	<b>2,939,835</b>	<b>587,967</b>
<b>Maintenance/Cleaning</b>							
Landscaping & Daily Cleanup	66,111	43,218	28,390	30,964	30,717	199,400	39,880
Janitorial Services	24,533	26,285	25,796	24,447	25,736	126,798	25,360
Beautification	2,865	5,799	3,974	3,196	2,700	18,534	3,707
<b>Sub-Total</b>	<b>93,509</b>	<b>75,302</b>	<b>58,160</b>	<b>58,607</b>	<b>59,153</b>	<b>344,731</b>	<b>68,946</b>
<b>Insurance</b>							
Typhoon, Fire & Vandalism	14,328	14,328	14,328	14,328	14,328	71,640	14,328
Comprehensive Public Liab	11,000	11,000	11,000	11,000	11,000	55,000	11,000
<b>Sub-Total</b>	<b>25,328</b>	<b>25,328</b>	<b>25,328</b>	<b>25,328</b>	<b>25,870</b>	<b>127,182</b>	<b>25,436</b>
<b>Public Safety</b>							
Night time Security	44,317	28,293	29,111	29,838	30,302	161,861	32,372
Lifeguard and 1st Aid	118,623	104,673	90,506	91,230	123,855	528,886	105,777
<b>Sub-Total</b>	<b>162,940</b>	<b>132,965</b>	<b>119,616</b>	<b>121,068</b>	<b>154,157</b>	<b>690,746</b>	<b>138,149</b>
<b>Total Expenditures</b>	<b>\$ 509,319</b>	<b>\$ 899,095</b>	<b>\$ 1,056,938</b>	<b>\$ 965,328</b>	<b>\$ 671,816</b>	<b>\$ 4,102,495</b>	<b>\$ 820,499</b>

<p><b>Exhibit D</b> Inventory of Facility and Equipment</p>
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Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: Main Storage/Locker Room

Qty.	Description	Volume/ size	Model/Color	Make/Brand	Serial No.
1 ea.	Reverse Osmosis	N/A	480 NLC – White/Blue	Serve Master	6+2
2 ea.	Reverse Osmosis Filters	N/A	FSA 100 – White	N/A	N/A
1 ea.	Water Pump	3 Phase	Grey	Toshiba	60730528
1 ea.	High Pressure Pump	N/A	Red	Semens	895
1 ea.	Water Purifier	PTU100	Beige	N/A	96-103563
10 ea. 9 box	Water Treatment	N/A	N/A	Mizukurin	15611009
1box	Water Treatment	18 Kg.		Kurita	301
1 ea.	Water Cleaning Pump	3 Phase	Introduction Motor	Toshiba	60195885
1 ea.	Injection Pump	3 Phase	N/A	Fuji	688

Inventory Location: Equipment behind the Main Storage/Locker Room

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
4 ea.	Fiber Glass Water Tank	5000 gal.	YMBM	N/A	N/A
1 ea.	Deep Well	4ft. X 4ft.	N/A	Concrete Cement	N/A
1 ea.	Water Pump	2 horse power	Grey	Hanil	00200413
1 ea.	Water Pump	2 horse power	Grey	Kikawa	29550100 67
1 ea.	Water Pump	2 horse power	Red	LG	81200359
1 ea.	Water Pump	2 horse power	Red	LG	70700740

Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: Main Concession Pavillion

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
1 ea.	Micro System	60 Watt	TA-1060 – Grey	TOA Newtechno Service	N/A
1 ea.	PA Amplifier		TA-2120 - Grey	TOA Newtechno Service	N/A
1 ea.	Step down Transformer	120V	TSD-N11U	Sanyo	N/A
1 ea.	Synthesizer FM/AM Stereo Tuner	120V	T-411M	Onkyo	N/A
5 ea.	Stereo Speakers	120V	White	TOA	N/A
1 ea.	Microphone	9V	Black	Kenwood	N/A
1 ea.	Megaphone	9V	Blue	TOA	ER-409
3 ea.	Portable Tent	12ft. X 26ft.	Yellow	N/A	N/A
1 ea.	Portable Tent	12ft. X 20ft.	Yellow	N/A	N/A
1 ea.	Portable Tent	12ft. X 12ft.	Yellow	N/A	N/A
1 ea.	Portable Tent	10ft. X 10ft.	Yellow	N/A	N/A
1 ea.	Portable Tent	8ft. X 12ft.	Yellow	N/A	N/A
1 ea.	Portable Tent	8ft. X 12ft.	Orange	N/A	N/A
1 ea.	Fire Extinguisher	10 Lbs.	Red	Ansul Sentry	MP-449747
1 ea.	Fire Extinguisher	10 Lbs.	Red	Ansul Sentry	MP-44962
1 ea.	Fire Extinguisher	10 Lbs.	Red	Ansul Sentry	MS097548
35 ea.	Wood Picnic Tables	4ft. X 5ft.	White	US Lumber	N/A
34 ea.	Wood Picnic Tables	4ft. X 4ft.	White	US Lumber	N/A
1 ea.	Rescue Stretcher	2ft X 8ft.	Green	Staph Chek	N/A
1 ea.	Motor & Deep Well Pump	3 Phase	N/A	Franklin Electric	2343175202
1 ea.	Cashier Box	N/A	White	Sharp	XE-A150
1 ea.	Air-condition	9,000 BTU split Type	Grey	Toshiba	10630071

Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: **Males Toilet Room at the Main Concession Pavillion**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
4 ea.	Wall Mirror	2ft. X 3ft.	N/A	N/A	N/A
2 ea.	Ceiling Fans	N/A	N/A	N/A	N/A
3 ea.	Toilets	N/A	Kemlin	N/A	N/A
3 ea.	Tissue Racks	N/A	N/A	N/A	N/A

Inventory Location: **Womens Toilet Room at the Main Concession Pavillion**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
2 ea.	Ceiling Fans	N/A	N/A	N/A	Good
4 ea.	Wall Mirror	2ft. X 3ft.	N/A	N/A	N/A
4 ea.	Toilets	N/A	N/A	N/A	N/A
8 ea.	Tissue Racks	N/A	COD-4032 – White	Colore	N/A

Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: **First Aid Room at the Main Concession Pavilion**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
1 ea.	Electric Fan	N/A	N/A	N/A	N/A
1 ea.	Emergency Oxygen tank	1000 PSIG	N/A	Lif-O-Gen	31-01-0510
1 box 6 pcs.	Neck Protection Holder	N/A	N/A	Laerdal	98-04-00
1 ea.	Folding Bed	2 <sup>1/2</sup> ft. X 6ft.	N/A	N/A	N/A

Inventory Location: **Generator Room**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
1 ea.	Denyo Generator	150KVA	DCA-150SPK – Orange	Denyo	3684778
1 ea.	Airman Generator	150KVA	SPG-150S – Purple/Blue	Airman	172040403
1 ea.	Fire Extinguisher	600 PSI	MP-449605	Ansul Sentry	N/A
1 ea.	Fire Extinguisher	600 PSI	MP-449718	Ansul Sentry	N/A
8 ea.	Diesel Containers	5 gal	84002	Wedco	N/A
2 ea.	Four Wheel Push Cart	3ft. X 6ft.	N/A	N/A	N/A
1 ea.	Fuel Tank	1000 gal	Fiberglass	N/A	N/A
1 ea.	Denyo Generator	150 KVA	Isuzu 6HK1	Denyo	3840931
1 ea.	Fire Extinguisher	600 PSI	N/A	Ansul Sentry	N/A
1 ea.	Water Blaster	3400 PSI	Honda GX 270	Mi-T-M	N/A
1 ea.	Denyo Generator	3 Phase output	DCA 25ESI	Denyo	3802481
1 ea.	Denyo Generator	3 Phase output	DCA 25ESI	Denyo	3802482
1 ea.	Denyo Generator	3 Phase output	DCA 25ESI	Denyo	N/A

Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: **Behind the Restaurant and inside the Kitchen Area**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
2 ea.	Fiberglass Water Tank	5000 gal.	N/A	YMBM	N/A
1 ea.	Fire Extinguisher	10 Lbs.	N/A	Ansul Sentry	MS-097690
1 ea.	Fire Extinguisher	10 Lbs.	N/A	Ansul Sentry	MP-449521
1 ea.	Fire Extinguisher	10 Lbs.	N/A Silver	Amerex	AA-83313
1 ea.	Fire Extinguisher	10 Lbs.	N/A Silver	Amerex	AA-83318

Inventory Location: **Life Guard Tower**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
1 ea.	Wood/Steel Frame Tower	6ft. X 10ft.	Yellow	Wood/Steel	N/A
1 ea.	1 <sup>st</sup> Aid Kit	N/A	N/A	Afassco	N/A
1 ea.	Rescue Board	N/A	Yellow	Surf Rescue	N/A
1 ea.	Paddle	N/A	Black	N/A	N/A

Managaha Island Concession  
Inventory List  
As of January 29, 2016

Inventory Location: **Sewage Treatment Building**

Qty.	Description	Volume/size	Model/Color	Make/Brand	Serial No.
1 ea.	Waste Water Tank	6,000 gal	Fiberglass	N/A	N/A
2 ea.	Blower Pump	N/A	N/A	N/A	BSR50A
1 ea.	Horse power water pump	N/A	N/A	N/A	RC 552251
1 ea.	Horse power water pump	N/A	N/A	N/A	RC 552250
1 ea.	Waste Water Tank	N/A	N/A	N/A	0611071

**Exhibit E**  
Master Concession Agreement

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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS  
SAIPAN, MARIANA ISLANDS**

**AGREEMENT FOR SPECIAL RECREATIONAL CONCESSION MANAGAHA  
ISLAND**

This Agreement for Special Recreational Concession ("Agreement") is made on this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the Department of Public Lands, ("DPL"), whose offices are at Dan Dan, Saipan, Commonwealth of the Northern Mariana Islands, and [Insert Concessionaire Name], a corporation/company organized and existing under the laws of the Commonwealth of the Northern Mariana Islands (the "Concessionaire").

**WITNESSETH**

WHEREAS, all public land in the Commonwealth is collectively owned by the people of Northern Marianas descent;

WHEREAS, DPL is responsible for the management, use, and disposition of public lands of the Commonwealth;

WHEREAS, Managaha Island is public land which is constitutionally required to be used for cultural and recreational purposes;

NOW, THEREFORE, DPL determines that it is in the best interest of the people of Northern Marianas descent to facilitate the recreational use of Managaha Island, to protect its cultural use, to control the number of concessionaires permitted to do business on the Island, and to maximize the revenue to DPL and its beneficiaries from the concessions on Managaha Island by granting an exclusive recreational concession.

In consideration of the mutual covenants contained herein, the parties agree as follows:

**SECTION 1. Description of Concession.**

A. Grant of Concession: DPL grants Concessionaire in return for money, the delivery of certain public services, the maintenance and upkeep of Managaha Island, and other good and valuable

consideration from Concessionaire, an agreement to operate and maintain a special exclusive recreational concession on Managaha Island.

B. Exclusive Concession Area: The Concessionaire is hereby also granted the right to use the Exclusive Concession Area outlined in Exhibit 1 incorporated herein.

1. Public Access: Concessionaire shall not impose a fee or prohibit the general public from entering the main pavilions in the Exclusive Concession Area for the purpose of using the picnic tables, restrooms, and shower rooms. Concessionaire shall have the right to limit access by the general public from those areas in the Exclusive Concession Area where safety is a concern. Concessionaire shall post "no entry" signs in such areas where the public is prohibited from entering or gaining access to, such as Concessionaire's office, generator rooms, reverse osmosis plant, storage facilities, etc. Concessionaire shall not prohibit the general public from using any beach on Managaha Island.

2. Public Benefit:

a. Transportation. Concessionaire shall provide free transportation to CNMI Residents from Saipan to and from Managaha Island. Residents shall not be subject to onerous or burdensome proof of residency requirements, and no identification shall be required of minor children below the age of 16 to prove residency provided they travel with an adult who shows proof of residency. Twelve hour reservation may be required to secure availability, however residents may not be prohibited from free transportation for failure to obtain advance reservations if space is available.

b. Additional Public Benefits **[AS BID ]**.

3. Marketing Efforts: **[AS BID]**.

## **SECTION 2. Term of Concession.**

The term of this Agreement shall be for a period of five (5) years. The term shall commence on September 1, 2018.

## **SECTION 3. Uses and Privileges.**

A. Concessionaire shall have the exclusive right to operate all commercial concessions on Managaha Island during the term of this Agreement.

B. The term "commercial concessions" includes the right to prepare, deliver, sell, and provide food or beverages in the Exclusive Concession Area for all persons who desire to purchase the same;

the rental or sale of water sports equipment, recreational equipment, or beach equipment and related supplies; the conduct of tours on the Island and from the Island; the sale of goods, and entertainment for profit in the Exclusive Concession Area. For the avoidance of doubt, this Concession Agreement does not and shall not operate to exclude other marine sports operators from providing transportation to and from Managaha Island, and in connection with such transportation, from selling and providing marine sports and recreational activities for profit provided that such tours and activities shall not be sold by such third parties on Managaha Island and shall not be provided within the Exclusive Concession Area.

1. The Concessionaire must obtain the prior written consent of the DPL to conduct any activities other than to:

a. Operate a snack bar and other food and beverage activities in the main pavilion of the Exclusive Concession Area;

b. Operate a small gift shop for the sale of handicrafts, souvenirs, and products associated with beach and picnicking activities;

c. Operate underwater activities, such as SCUBA diving, SNUBA diving, snorkeling, and sea walker-type tours;

d. Operate surface water activities, such as parasailing, banana boat rides, pedal bikes, power boat lagoon cruises, windsurfing, canoe rentals and tours, and kayak rentals and tours;

e. Rental and sale of beach umbrellas, towels, mats, lounge chairs, life jackets, skin and SCUBA diving equipment;

f. Rental of beach volleyballs and nets;

g. Rental of storage lockers; and

h. Conduct native shows (e.g. dances, weaving).

2. Such consent shall not unreasonably be withheld, nor shall DPL charge any fee or percentage for such consent other than the percentage which is charged for the Additional Gross Receipts Rent in section 6B hereof.

C. The sale of food or beverages, the renting or sale of equipment and supplies, the sale of tours, and the sale of goods shall take place within the Exclusive Concession Area.

D. The exclusive right to operate all commercial concessions does not include the exclusive right to provide transportation to and from the Island, even if any regulatory agency or branch of the government places a limit on the number of persons or tourists who may visit the Island.

E. All activities conducted hereunder shall be conducted in accordance with all applicable laws and regulations. Without limiting the generality of the foregoing, all marine sports activities conducted in the waters surrounding Managaha Island or within the Managaha Island Marine Protected Area shall be in compliance with applicable regulations. Concessionaire and all permitted sub-concessionaires shall obtain all necessary permits for marine sports activities and shall conduct their activities in accordance with all permit conditions and requirements.

F. Maintenance of Conservation Efforts. Managaha Island is habitat for threatened and endangered species and is home to a significant nesting area for seabirds. Concessionaire shall maintain preserve areas in existence on the date of this Agreement, and shall cooperate with conservation efforts that may evolve from time to time during the term of this Agreement.

#### **SECTION 4. Hours of Operation.**

A. Concessionaire shall conduct the operation of the concessions between the hours of 0700 to 1800. Night operations shall be subject to the prior written approval of DPL upon application in writing at least 15 days in advance specifying the type of activity to be conducted. Such consent shall not unreasonably be withheld, nor shall DPL charge any fee or percentage for such consent other than the percentage which is charged for the Additional Gross Receipts Rent in section 6B hereof.

B. DPL hereby gives its consent to the following additional activities, which may take place during the hours of operation or up to 9:30 p.m.:

- (1) dinner service;
- (2) dinner shows;
- (3) weddings; and
- (4) private banquets.

#### **SECTION 6. Rental Payment.**

A. Base Rent. The Concessionaire shall pay a base rent of Three Hundred Thousand Dollars (\$300,000.00) **[OR HIGHER AS BID]** each year paid annually in advance during the five year term.

B. Additional Gross Receipts Rent. In addition to the Base Rent, Concessionaire shall pay DPL three percent (3%) **[OR HIGHER AS BID]** of its annual gross receipts each year derived from the Agreement. The term "gross receipts" is defined in section 23(G) hereof. Concessionaire shall pay the additional gross receipts rent on a quarterly basis.

C. Past due rental shall bear a late fee of one and a half percent (1.5%) per month, compounded monthly, from the date such payment was due until it is paid. The payment of the late fee shall not be construed as relieving the Concessionaire from any default in making payments in a timely manner.

D. Should this Agreement be extended or renewed, or should Concessionaire holdover after termination of this Agreement, gross receipts rent shall be due for any additional period of time.

E. Payments shall be made at DPL's office located in Dandan, Saipan, Northern Mariana Islands, or at such a place as DPL may designate in writing.

#### **SECTION 7. Management and Maintenance of Island.**

It shall be the responsibility of the Concessionaire, at its own expense, to perform the following services for the public's benefit:

- A. Clean up of trash on the entire island and dispose of it on a daily basis;
- B. Maintain the toilet and shower facilities located within the Exclusive Concession Area by providing cleaning, upkeep, and repair services on a regularly-scheduled basis;
- C. Maintain the pavilion, generators, reverse osmosis plant, sewage plant and other improvements and equipment as listed in Exhibit No. 2 within the Exclusive Concession Area in good working order;
- D. Maintain the other improvements on the island (i.e. the visitor pala palas, picnic tables, and dock);
- E. Provide nighttime security services on the Island;
- F. Provide free of charge to local residents, on a 12 hour advance reservation basis, 20% of the seating capacity on regularly scheduled daily round trips to the island for passengers, and if the full 20% is not so utilized, then the Concessionaire will provide free of charge to local residents, the remainder of that number of seats upon request upon presentation at the dock of a CNMI driver's license for all adult passengers and written representation by such adult passengers that accompanying children are CNMI residents, and such additional seats as are available and not committed to other persons; and,
- G. Cut and trim vegetation, preserve native vegetation, and maintain nature trails. Concessionaire shall not introduce new vegetation to the Island without written approval of DPL.

## **SECTION 8. Reporting of Income and Audit Report.**

A. During the term of this Agreement, Concessionaire shall submit to DPL a copy of its monthly CNMI Business Gross Revenue Tax Return for revenues generated from the transfer of customers to and from Managaha and activities on Managaha Island, regardless of whether the sale of those activities occurred on Managaha, no later than fifteen days after the filing of such report at the Division of Revenue and Taxation.

B. During the term of this Agreement, Concessionaire shall submit to DPL no later than ninety (90) days after each fiscal year audited financial statements by certified public accountants licensed in the CNMI which shall cover all revenue generated by Concessionaire in relation to its business operation associated with Managaha Island. Any duly authorized representative of DPL shall have access and the right to examine and audit any or all pertinent books, documents, papers, and records of the Concessionaire and its subcontractors relating to this Agreement during the normal business hours of any working day. Concessionaire shall insert a similar provision in its subcontract agreements pertaining to this right of access, examination, and audit, and shall make available to said representative or agent of DPL all books, documents, and records of the Concessionaire and subcontractor which may be necessary for completion of a special audit of any or all activities conducted in the Exclusive Concession Area. This right of access and inspection shall continue until the expiration of three years after the final rental payment under this Agreement is made or termination of the Concession. Any shortage of rents or payments found shall become due and payable to DPL upon notice.

## **SECTION 9. Landing and User Fees.**

A. The DPL shall continue to charge and collect a landing and user fee from all boat and tour operators who bring tourists to the Island. "Tourist" means a person who is not a resident of the CNMI. "Boat and tour operators" means any person who transports tourists to the Island for any type of fee or other compensation including Concessionaire. The fee shall be at least \$5.00 per tourist or as determined by DPL from time to time. On a monthly basis Concessionaire shall provide DPL its manifests for the passengers, distinguishing Tourists from local residents, along with payment for the landing fee.

## **SECTION 10. Assignment of Agreement.**

A. Except with the prior written consent of DPL in each instance, the Concessionaire, its employees, successors, or assigns shall not:

1. Assign, lease, sublease, sell, convey, mortgage, or in any way encumber, transfer, or dispose of this Agreement or any interest therein;

2. Permit the Exclusive Concession Area or the existing improvements to be used or occupied by others, except for ordinary non-commercial purposes;

3. Enter into any management contract or other arrangement by which the concession is managed or operated by anyone other than the Concessionaire; or

4. Grant concessions or permits or otherwise contract for or permit any other party to conduct any activity, business, or enterprises of any kind in the Exclusive Concession Area which are the subject of this Agreement. For the purpose of this section, the term "concession" shall mean a privilege or right to sell products or perform services which are peripheral to Concessionaire's proprietary use of the Exclusive Concession Area.

B. The consent of DPL under this section may be granted, denied, or made subject to such conditions as DPL finds to be in the best interest of its beneficiaries.

C. Any transaction in violation of this section is null and void, of no force and effect, and is in violation of this Agreement.

D. This Agreement shall not be assigned or transferred by operation of law.

E. The consent of DPL to any of the actions described above in any one instance shall not relieve the Concessionaire from obtaining the consent of DPL in any other instance as provided herein.

F. The Concessionaire shall be permitted to subcontract services for meals, transportation, and diving without obtaining DPL's consent. Other services may be subcontracted only with the consent of DPL. Such consent shall not be unreasonably withheld. DPL may charge a reasonable fee for such consent.

G. If the sale, assignment, transfer, use, or other disposition of any of the issued and outstanding capital stock of Concessionaire or its successor or assignee, or of the interest of any general partner in a partnership holding this Agreement, or of the interest of any member of a joint venture, syndicate, or other group which may collectively hold this Agreement, shall result in changing the control of Concessionaire or such other corporation, partnership, joint venture, syndicate, or other group, then such sale, assignment, transfer, use, or other disposition shall be deemed an assignment of this Agreement and shall be subject to all the provisions of this Agreement with respect to assignments, including, but not limited to, the requirements for DPL consent.

1. For the purpose of this subsection, if the Concessionaire is a corporation, "change of control" shall mean any dissolution, merger, consolidation, or other reorganization of Concessionaire,

or the sale or other transfer of a controlling percentage of the capital stock of Concessionaire, or the sale of at least fifty-one percent of the value of the assets of Concessionaire. The term "controlling percentage" means the ownership of, and the right to vote, possessing at least fifty-one percent of the combined total voting power of all classes of Concessionaire's capital stock issued, outstanding, and entitled to vote for the election of directors. "Control" of any corporation shall be deemed to be vested in the person or persons owning more than fifty percent of the voting power for the election of the board of directors of such corporation.

2. For the purpose of this section, if the Concessionaire is a partnership, joint venture, syndicate, or other group which collectively holds this Agreement, "change of control" means a withdrawal or change, voluntary or involuntary or by operation of law, of any partner, individual, or entity owning more than fifty-one percent of the beneficial interest in the partnership, joint venture, syndicate, or other group. For the purpose of determining control by a person, control by members of the family of that person shall be included. For purposes of this subsection, "members of the family" shall include a person's spouse, grandparents, parents, brothers and sisters, nephews and nieces, and children by adoption and by blood.

H. Notwithstanding the foregoing, in connection with any reorganization of Concessionaire, Concessionaire shall have the right, subject to DPL's consent, to assign this Agreement to a corporation, company, general partnership, or limited partnership if: (1) Concessionaire, or any parent, subsidiary, or other affiliate of Concessionaire, is a general partner in the case of a partnership, or is the owner of a controlling percentage of the corporate or company assignee, (2) the assignee executes an agreement assuming Concessionaire's obligations hereunder, and (3) DPL is given notice of such assignment.

I. The Concessionaire shall furnish a statement of ownership/control to DPL prior to the commencement date of this Agreement and upon the anniversary date of each year thereafter. If the Concessionaire is a corporation, such statement shall include the names and addresses of all principal stockholders (those which own more than 10% of the total combined voting power of all classes of capital stock issued, outstanding and entitled to vote to elect directors) and officers of the Concessionaire. If the Concessionaire is a partnership, joint venture, syndicate or other group, such statement shall include the name, address, and respective interest of each person or entity with an interest in the partnership, joint venture, syndicate, or other group.

## **SECTION 11. Photography Fee.**

The Concessionaire and all other persons who engage in commercial photography shall first obtain a Temporary Occupancy Agreement for photography from DPL, pay the applicable fees, and comply with all other applicable DPL regulations.

## **SECTION 12. Public Security.**

A. Nighttime Security. The Concessionaire shall provide night security services on Managaha Island to safeguard the property belonging to DPL and the Concessionaire against theft and vandalism.

B. Lifeguards. The Concessionaire shall provide lifeguards to monitor, patrol, and supervise the activities of people swimming, snorkeling and otherwise in the water at all beach areas surrounding the Island during operating hours. All lifeguards shall be trained and certified in the Commonwealth or any U.S. jurisdiction in administering first aid and water safety.

C. Rangers. The DPL shall assign two rangers to Managaha Island. Their salaries and benefits shall be paid by DPL. Their responsibilities shall include the following:

1. Collection of the Landing and User Fee as provided by law;
2. Recording the number of passengers landing on Managaha Island, on a daily basis;
3. Enforcement of DPL Regulations; and
4. Ensure compliance with the terms of this Agreement.

D. Cooperation with Rangers. The Concessionaire and its subcontractors agree to cooperate to the fullest extent possible with the Managaha Rangers and DPL on Managaha Island and to follow the directive of such officers. The Rangers and DPL shall have access at all times to the areas of operation of the Concessionaire and any subcontractors in the Exclusive Concession Area for the purposes of providing security and conducting inspections to determine whether Concessionaire and subcontractors are in compliance with the terms and conditions of this Agreement and subcontract agreements. The preceding sentence shall be included in all agreements between the Concessionaire and subcontractors.

E. Storm Conditions. When tropical storm condition 2, typhoon condition 2, when the US Coast Guard declares port condition “Yankee” for the island of Saipan, or when the Concessionaire after consultation with DPL otherwise determines it is unsafe to land passengers at the pier (and any and all landing of passengers shall take place only at the pier), Concessionaire shall be relieved of its obligation to operate all island infrastructure, including utilities, lifeguard and public security, and all concession activities shall be suspended. Concessionaire shall take reasonable efforts to protect the improvements and the equipment in the Exclusive Concession Area from storm or typhoon damage.

### **SECTION 13. Cultural Events.**

Managaha Island is a unique cultural and recreational resource for the people of the Commonwealth. DPL reserves the right to entirely close or limit the number of tourists to Managaha Island so that the island may be used for bona fide cultural events. DPL shall notify the Concessionaire at least fifteen (15) days in advance before such limited access or closure. To reduce the impact on the Concessionaire's business, DPL and Concessionaire shall endeavor to work together to schedule events for times that are least disruptive to business and within the limits set by cultural practices.

### **SECTION 14. Insurance.**

A. Fire and Property Damage Insurance. The Concessionaire shall, from the effective date of this Agreement and continuing throughout the entire term of this Agreement and any extension thereof, carry fire and property damage (including typhoon and vandalism) insurance with extended coverage endorsements, jointly in the names of the Concessionaire and DPL, covering the full insurable value of all permanent improvements and equipment in the Exclusive Concession Area, subject to appropriate co-insurance provisions.

B. Liability Insurance. Concessionaire agrees to procure no later than the date of execution of this Agreement, and to maintain in force during the entire term of this Agreement or any extension thereof, at its sole expense, commercial general liability insurance for its operation that includes DPL and the CNMI Government as co-insureds, by a company or companies authorized to do business in the CNMI, with minimum coverages of \$1,000,000 for bodily injury, \$1,000,000 for wrongful death per person, and \$1,000,000 general liability coverage for each occurrence, in order to insure the CNMI government to at least the limit of its liability under the Government Liability Act, as expressed in 7 CMC § 2202, or such additional amounts as may be required by law or regulation, as amended from time to time.

C. Administrative Provisions. Copies of both such policies shall be delivered to DPL within thirty days of their issuance and shall contain a clause stating that at least thirty days' written notice shall be given to DPL prior to cancellation or refusal to renew such policies. The Concessionaire shall pay all premiums and other charges payable in connection with the insurance. DPL will reimburse the Concessionaire for the costs of the Fire and Property Damage Insurance required by this section. DPL will not reimburse Concessionaire for any costs associated with Concessionaire's Commercial General

Liability Insurance. All policies obtained to comply with this section shall be from reputable companies acceptable to DPL.

**SECTION 15. Indemnify, Defend, and Hold Harmless.**

A. As part of the consideration hereof, the Concessionaire will indemnify and hold harmless DPL and the CNMI government, its successors, employees, and/or assigns, from and against claims, demands, damages, and liability whatsoever for injury or loss to persons or property which may occur in the Exclusive Concession Area or which arise out of or in connection with any activities under this Agreement during the term of this Agreement, any extension thereof, or during any holdover by Concessionaire.

B. As part of the consideration hereof, the Concessionaire also agrees to defend DPL, the CNMI government, its successors, employees, and/or assigns, from and against any claim, demand, or lawsuit with respect to the subject of the indemnity contained herein, whether or not such claims, demands, or actions are rightfully or wrongfully brought or filed, and against all costs incurred by DPL, the CNMI government, its successors, employees, and/or assigns. DPL, the CNMI government, its successors, employees, and/or assigns, at their own option, shall have the sole authority for the direction of their defense, and shall be the sole judge of the acceptability of any compromise or settlement of any claims or actions against them.

**SECTION 16. Abandonment.**

Should Concessionaire fail to use the Exclusive Concession Area for the purposes set forth in this Agreement for a consecutive period of thirty (30) days without securing the prior written consent of DPL, the Concessionaire shall be deemed to have abandoned the Exclusive Concession Area, and in such event, Concessionaire's right to use the Concession area may, at the option of DPL, be terminated.

**SECTION 17. Violation and Termination of Agreement.**

- A. The Concessionaire shall be in violation of this Agreement if;
1. Concessionaire fails to pay any rent or other charges required to be paid by Concessionaire within thirty (30) days after the due date under the terms of this Agreement to DPL and fails to cure such violation within five (5) CNMI work days from and after written notice from DPL;
  2. Concessionaire violates any term or provision of this Agreement and fails to cure such violation within thirty (30) days from and after written notice from DPL; or

3. Concessionaire, its successors and assigns, becomes insolvent or files for relief under Chapter 7 or 11 of the United States Bankruptcy Code.

B. Upon the occurrence of any of the violations described above, all of the Concessionaire's rights under this Agreement are terminated, including, but not limited to, Concessionaire's right to use the Exclusive Concession Area.

C. Upon termination of the Concessionaire's rights under this Agreement, DPL may, upon fifteen days' written notice to vacate and DPL's tender of the prorated portion of the rent already paid by Concessionaire for the remainder of the term of the Agreement, enter into and upon the Exclusive Concession Area, take possession of all of its property and improvements, and evict the Concessionaire without liability of trespass.

D. The remedies herein shall not prejudice DPL's other rights and remedies at law or in equity, and are in addition to, and not instead of, DPL's right to terminate the Agreement for convenience and without cause as provided herein in section 18 of this Agreement.

#### **SECTION 18. Termination for Convenience.**

A It is expressly understood and agreed that DPL, at its sole discretion, with or without any cause, may cancel this Agreement upon giving ninety (90) days advance written notice, as to the whole or part of the Exclusive Concession Area, and shall have the right to reenter and take possession of the Exclusive Concession Area or any part thereof, without the necessity for any legal action. When there is such a cancellation, DPL will return within thirty (30) days that portion of any prepaid rent which, by proration, is the rent for the remainder of the term of the Agreement.

#### **SECTION 19. "Hold Over" Clause.**

A. If the Concessionaire fails to vacate the Exclusive Concession Area upon the expiration, termination, or cancellation of this Agreement, the Concessionaire shall be deemed a Holdover Concessionaire.

B. A Holdover Concessionaire shall be obligated to pay DPL a daily holdover rate that is calculated the same way as the daily rate during the term. Specifically, the five year minimum basic rent shall be reduced pro rata to a daily rate. The Holdover Concessionaire would pay 150% of the Base Rent rate and five and one half percent (5.5%) of its gross receipts during the same period. The payment of the Minimum Base Rent, as defined in Section 6A, shall be made at the first of every month in advance for that month. The Additional Gross Receipts Rent, as defined in Section 6B, shall be due

no later than 15 days after Concessionaire files its CNMI Gross Business Tax Monthly Return, as provided in Section 6B.

C. Payment of the holdover fee shall in no way constitute a limitation upon any other rights or remedies DPL may be entitled to pursue for violation of this Agreement, for trespass, for illegal possession, or for any other cause of action arising out of the failure to vacate the Exclusive Concession Area, including the right to evict the Holdover Concessionaire. In the case of eviction, DPL's attorney's fees and costs shall be paid by the Holdover Concessionaire.

**SECTION 20. Condition of Premises.**

The Concessionaire acknowledges that it has examined the Exclusive Concession Area and all items set forth on the attached inventory before the issuance of this Agreement and knows the conditions thereof and that no representation other than those expressed herein have been made by DPL. The Concessionaire accepts the Exclusive Concession Area in its condition as of the date of the execution of this Agreement.

**SECTION 21. Public Auditor.**

This Agreement is subject to 1 CMC § 7845. The Concessionaire, its successors and assigns, shall provide, upon request of the Public Auditor of the Commonwealth of the Northern Mariana Islands, all records and reports, and shall allow audit, inspection, and access to its books, records, documents, correspondence, and any other data and material relating to this Agreement, to the Public Auditor and do any other acts required under 1 CMC § 7845. This right of access and inspection shall continue until the expiration of three years after the final rental payment under this Agreement is made or such other times as set forth in 1 CMC § 7845.

**SECTION 22. Notices.**

Except as otherwise specified herein, all notices required or permitted under this Agreement shall be in writing and shall be delivered in person to the following office:

DPL: Department of Public Lands  
Joeten Dandan Commercial Building  
P.O. Box 500380  
Saipan, MP 96950

CONCESSIONAIRE:

or at such other address as DPL or Concessionaire may from time to time specify by notice. All notices shall be deemed delivered on the date when personal delivery is made evidenced by a signed receipt stamp.

**SECTION 23. General Provisions.**

A. Waiver. No waiver of any default of the Concessionaire shall be implied from any omission of DPL to take any action on account of such default if such default persists or is repeated; and no express waiver shall affect the default other than the default specified in the express waiver, and that only for the time and to the extent therein stated. One or more waivers of any covenant, term or condition of this Agreement by DPL shall not be construed as a waiver of any subsequent violation of the same covenant, term, or condition. The consent or approval of DPL to or of any action by the Concessionaire requiring DPL's consent or approval shall not be deemed to waive or render unnecessary DPL's consent or approval to or of any subsequent or similar acts by the Concessionaire. The acceptance of the bid payment or other fees, by DPL shall not be deemed to be a waiver of the terms or conditions, including the remedies of DPL. No covenant of this Agreement shall be deemed waived by either party unless such waiver is in writing and signed by the party waiving the covenant.

B. Agreement Complete. It is hereby expressly agreed that this Agreement, together with exhibits attached hereto, contains all of the terms, covenants, conditions, and agreements between the parties hereto relating in any manner to the use and occupancy of the Exclusive Concession Area; that the execution hereof has not been induced by either of the parties by representations, promises, or understandings not expressed herein and that there are no collateral agreements, stipulations, promises, or understanding of any nature whatsoever between the parties relating in any manner to the use and occupancy of the Exclusive Concession Area; and that the terms, covenants, conditions, and provisions of this Agreement cannot be altered, changed, modified, or added to except in a writing signed by the parties hereto.

C. Interpretation. The language in all parts of this Agreement shall be in all cases construed simply, according to its fair and most reasonable meaning, and not strictly for or against DPL or Concessionaire. Captions and paragraph headings contained herein are for convenience and reference only, and shall not be deemed to limit or in any manner restrict the contents of the paragraph to which they relate.

D. DPL's Representative. The authorized representative of DPL for the purpose of this Agreement shall be the Secretary of the Department of Public Lands or its designee.

E. Concessionaire's Representative. The authorized representative of the Concessionaire for the purpose of this Agreement shall be or his designee.

F. Law Governing. This Agreement shall be governed by and subject to the laws of the Commonwealth, both as to performance and interpretation therein. If any part of this Agreement shall be held invalid under the laws of the Commonwealth of the Northern Mariana Islands for any reason, the same shall in no way impair the validity of this Agreement and this Agreement shall otherwise remain in full force and effect.

G. Gross Receipts. "Gross Receipts" as the term is used herein means all income or revenue whatsoever, including money and any other thing of value, received by or paid to the Concessionaire, its subcontractors, or received by or paid to others for the use and benefit of any of the aforementioned, derived from business done, sales made, or services rendered directly from or in the Exclusive Concession Area, derived from the subcontracting or other use of the Exclusive Concession Area, or derived from any activity relating to this Agreement including the transport of passengers to and from Managaha, revenues from activities even if the sale did not occur on Managaha (e.g. pre paid prepackaged tours) whether by agents or otherwise. The final sales price to the end customer shall be the basis of determining Gross Receipts. The Concessionaire shall not directly or indirectly divert from the inclusion in Gross Receipts any income or revenue whatsoever derived hereunder to any other business or enterprise located elsewhere. The following items may be deducted from the gross receipts:

1) to the extent the same shall have been included in "Gross Receipts", there shall be deducted credits to customers for the returned merchandise, merchandise trade-ins, exchanges, merchandise cancellations, and any and all credits to customers of a similar nature.

#### **SECTION 24. Agreement Binding.**

This Agreement and the covenants, conditions and restrictions hereof shall extend to and be binding upon the parties hereto, their heirs, successors and assigns and to any other person claiming to hold or to exercise any interest by, under or through any of the parties hereto.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement for Special Recreational Concession as of the date and year first above written.

**CONCESSIONAIRE:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS )  
SAIPAN, MARIANA ISLANDS )

**ACKNOWLEDGMENT**

On this \_\_\_\_ day of \_\_\_\_\_, **2018**, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared \_\_\_\_\_, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed for the purposes set forth therein.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_

**Notary Public**

**DEPARTMENT OF PUBLIC LANDS  
P.O. BOX 500380 SAIPAN, MP 96950**

**DEPARTMENT OF PUBLIC LANDS:**

By: \_\_\_\_\_  
Marianne Concepcion-Teregeyo  
Secretary

Date: \_\_\_\_\_

COMMONWEALTH OF THE )  
NORTHERN MARIANA ISLANDS )  
SAIPAN, MARIANA ISLANDS )

**ACKNOWLEDGMENT**

On this \_\_\_\_ day of \_\_\_\_\_, **2018**, before me, a Notary Public in and for the Commonwealth of the Northern Mariana Islands, personally appeared **Marianne Concepcion-Teregeyo, Secretary of the Department of Public Lands**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the purpose set forth therein.

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed my official seal the day and year first above written.

\_\_\_\_\_  
**Notary Public**

**APPROVED AS TO FORM AND LEGAL CAPACITY:**

By: \_\_\_\_\_  
**EDWARD MANIBUSAN**  
**Attorney General**