

**DEPARTMENT OF PUBLIC LANDS
RESPONSES TO QUESTIONS REGARDING RFP18-RED002
MANAGAHA ISLAND MASTER CONCESSION OPERATOR**

Question 1: Can we add new trees and vegetation to the shoreline for proper erosion control? **DPL's response to Question 1:** *Although the shorelines of Managaha Island are not within the Exclusive Concession Area (ECA), DPL and the company awarded the Managaha concession agreement can work with CRM, DLNR, and other regulatory agencies as necessary to determine proper erosion control. No changes to the shoreline may be made without first obtaining the consent of DPL and all other CNMI regulatory agencies.*

Question 2: Can we add artificial reefs? **DPL's response to Question 2:** *This type of improvement/modification is also outside of the ECA, and the RFP requirements. A proposer with this modification in mind must inquire with the correct regulatory agency(ies) if such activity is permissible.*

Question 3: Are we able to create a sustainable nursery from existing saplings? **DPL's response to Question 3:** *The creation of a sustainable nursery would require the permission of all relevant CNMI regulatory agencies. However, conservation and sensitive areas on Managaha are not to be disturbed.*

Question 4: We note that the concession area is cluttered with trash, garbage, barrels of sewage and is indeed an environmental crisis. Is there any plan to have the current operator clean the island that might be required with their lease before returning the site? Otherwise it will be a significant task and expense for the new concession upon start up. **DPL's response to Question 4:** *DPL requires all permittees, lessees, and operators of activities on public land to keep the premises uncluttered and to properly dispose of trash and sewage regularly. Should the current operator not participate, nor be awarded the concession agreement, an exit inspection will be conducted addressing removal and disposal, among other exit requirements. Please include in your proposal how you plan on improving on the existing standard of cleanliness.*

Question 5: Will DPL be amenable to adding an additional 1 landing fee per person to help offset the concessionaire's insurance premium? **DPL's response to Question 5:** *No additional landing fee may be charged for this purpose.*

Question 6: Can we have annual GRT reported for the ECA for the current concessionaire? **DPL's response to Question 6:** *The current concessionaire does not report gross receipts tax to DPL. Gross revenues are reported to DPL, but this amount is not restricted to the ECA. DPL does not possess the requested information.*

Question 7: Can we have the latest annual report for landing fee? **DPL's response to Question 7:** *The latest Managaha Island Landing Fee annual reports are provided for Fiscal Year 2017 and Fiscal Year 2018 (to date).*

Question 8: Can the concessionaire charge additional \$5 for other visitors being transported to Managaha other than concessionaire's customers? **DPL's response to Question 8:** No.

Question 9: Within the agreement, its stated that concessionaire agrees to defend DPL regarding any claim, demand, or lawsuit. Will this exclude or include the defense and findings of the insurance company? **DPL's response to**

Question 9: *The defense and indemnification requirements are as set forth in Section 15 of Exhibit E. DPL cannot provide you with legal advice concerning the scope of this provision. Please consult with independent legal counsel if you have questions concerning the legal interpretation of Exhibit E*

Question 10: Will DPL consider an automatic 5 year renewal of the Concessionaire's contract if in full compliance with material terms of contract? **DPL's response to Question 10:** *DPL will consider a timely 5-year renewal of the master concessionaire agreement after a thorough review of the performance and compliance of the concessionaire.*

Question 11: Will the extra roof tiles stay with the concession?

Question 12: Will the extra walkway tiles stay with the concession?

Question 13: Does the floating net barrier for the swim area belong to Tasi or DPL?

Question 14: Will all the permanent structures stay with the concession or will Tasi remove any of them?

Question 15: What on the island will the current concessionaire be allowed to remove from Managaha?

Question 16: Who owns the lockers in the bathrooms?

DPL's response to Questions 11 to 16: *The inventory, furniture, fixtures, extra materials, and existing structure in the ECA are the property of DPL and will not be removed.*

Question 17: Other than what has been stated in the RFP, are there additional items that would be part of the ECA? Such as TVs, **DPL's response to Question 17:** *All inventory procured for the operation of the concessionaire are purchased by the Managaha Landing and User Fees, and therefore are the property of DPL.*

Transportation

Question 18: Will DPL require all other companies providing transportation to obtain permits? **DPL's response to**

Question 18: *Yes.*

Question 19: Will DPL require all other companies providing transportation the same 20% local transportation requirement as the Master Concessionaire to and from the island? **DPL's response to Question 19:** *No requirement exists at this time.*

Question 20: Can DPL please provide any and all issues or concerns to the conditions that are not up to the standards, in which we will be responsible for fixing and taking care of? **DPL's response to Question 20:** *DPL has provided all interested parties with the opportunity to inspect the current condition of all facilities within the ECA. It is the concessionaire's responsibility to provide for reasonable repair and maintenance. Repair and maintenance will be reimbursed in accordance with the RFP packet and Exhibit E.*

Question 21: What is the DPL's policy for future ADA compliance on the island? **DPL's response to Question 21:** *The Concessionaire is required to comply with all applicable federal laws.*

Question 22: Can the existing radio tower be removed if not in use? **DPL's response to Question 22:** *The radio tower is located outside of the ECA and cannot be removed as the Coast Guard utilizes it as a ship signal tower.*

Question 23: What limitations are there with structural and/or facility improvements within and outside the ECA? **DPL's response to Question 23:** *All major changes to structures and facilities beyond normal repair and maintenance must be made with DPL's prior consent.*

Question 24: What facility concerns are there within and outside the ECA? **DPL's response to Question 24:** *The pavilions require some renovation and repair of roof tops due to damage from Typhoon Soudelor.*

Question 25: 16 barrels/drums of sewage were onsite by the sewage tank system, how often is it required to move these drums off the island? **DPL's response to Question 25:** *The drums of sewage are transported every three (3) months to Saipan for proper disposal.*

Question 26: Does DPL see anything needing to be done to the pier? **DPL's response to Question 26:** *Cracks in the pier need repair and reinforcement. It is recommended to apply anti-skid surfaces on the pier. Railings are needed for additional safety.*

Question 27: Does DPL see anything needing to be done to the shack on the end of the pier for the rangers? **DPL's response to Question 27:** *The DPL Ranger station requires repainting and the installation of electrical power source.*

Question 28: On page 6 of the RFP Information packet, it was mentioned that the CNMI Legislature has on several occasions proposed to statutorily restrict DPL from collecting the Managaha fees assessed on each nonresident visitor to the island, and should DPL no longer be able to collect the landing fees, how would DPL adjust the rental amount and how much percentage would it be? Aside from this attempt by the Legislature, are there other proposed restrictions being done and if so, how is it going to be implemented? **DPL's Response to Question 28:** *DPL will not unilaterally adjust the amount of rent. Any change to rent would need to be negotiated between the parties and mutually agreed upon through a written amendment to Exhibit E. DPL does not anticipate that it will no longer be able to collect landing fees during the term of the agreement. DPL is not aware of any other proposals to change the collection of the landing fee at this time.*

Question 29: On page 6 of the RFP Information packet, by "bidders should factor any cost of providing services", does this include operating plans after the regulation? **DPL's Response to Question 29:** *Yes.*

Question 30: Exhibit A-Managaha Island and Exhibit B-Exclusive Concession Area, is there a difference between the two? Does "Exclusive Concession Area" means that this is only the area that the concessionaire is allowed to utilize, in terms of improvement and renovation? **DPL's Response to Question 30:** *Exhibit A is an aerial view of the entire island. Exhibit B is a map of the entire island delineating the Exclusive Concession Area (ECA), in which the concessionaire is only allowed to utilize and operate commercially. Improvements and renovations may be made to structures outside of the ECA, with DPL's approval, and would be considered a public benefit, but cannot be utilized for commercial purposes.*

Question 31: On Exhibit C-Summary of Expenses, Equipment and Infrastructure, for Power, Water & Sewage, for year 2012-2015, how did you come up with these figures? **DPL's Response to Question 31:** *As these are amounts from previous operating years, they are actual expenses recorded.*

Question 32: Exhibit E-Master Concession Agreement, Section 3/D, states “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”, does this mean that Concessionaire should not stop other companies to transport tourists/visitors to the Island, even though there is a limit on the number of people allowed to visit? What if the limit has been reached? Whose obligation is it to oversee the number of people who visits the Island? **DPL’s Response to Question 32:** *There is currently no limit on the number of visitors allowed to visit the Island per day. DPL currently employs Managaha Rangers and has up to three (3) rangers per day at the dock. One of the key responsibilities of the Managaha Rangers is to tally each visitor that arrives on Managaha Island.*

Question 33: Please explain further Section 7.F of Exhibit E, especially the 20% seating capacity to be provided to local residents. **DPL’s Response to Question 33:** *The “Rules and Regulations Regarding the Commercial Use Of Managaha Island” requires that the concessionaire reserve 20% of seating capacity on all of its vessels to local residents free of charge to and from Managaha Island.*

Question 34: Does DPL has a list of commercial items prohibited to the island? **DPL’s Response to Question 34:** *All commercial activities on the Island must be conducted in compliance with the concession agreement and all applicable laws and regulations.*

Question 35: Section 10.B of Exhibit E states “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, who are the beneficiaries? **DPL’s Response to Question 35:** *The beneficiaries of DPL are persons of Northern Marianas Descent (NMDs), as they collectively own all public lands in the CNMI. DPL manages and administers public lands for the benefit NMDs.*

Question 36: What does “shall not be assigned or transferred by operation of law” mean on Exhibit E, section 10.D? Can you cite an example? **DPL’s Response to Question 36:** *DPL cannot provide legal advice on the meaning of standard contractual terms. Please consult independent legal counsel if you are unsure as to the meaning or interpretation of any term or provision of the concession agreement.*

Question 37: Exhibit E, Section 10.F, states that “The Concessionaire shall be permitted to subcontract services for meals, transportation, and diving.....” What about other water sports, selling souvenirs and conducting tours? **DPL’s Response to Question 37:** *As the agreement (Exhibit) states also under Section 10.F, “Other services may be contracted only with the consent of DPL.” Water sports, selling souvenirs, and conducting tours are categorized as “other services”.*

Question 38: Could you provide us additional details on the Transfer of Rights of the Concessionaire? **DPL’s Response to Question 38:** *Any transfer of rights in the concession agreement must be done in accordance with the provisions of Section 10 of the agreement. The prior, written consent of DPL is required for all transfers. If you have additional questions as to how this provision would apply under specific circumstances, please consult with independent legal counsel.*

Question 39: Could you cite an example or could you provide us additional details on Section 19 of Exhibit E? What instances would lead DPL to file a lawsuit against the Concessionaire? **DPL’s Response to Question 39:** *If you do not understand the language used in Section 19, please consult independent counsel. DPL cannot provide legal advice to you. The terms of the concession agreement will govern the contractual relationship between DPL and the Concessionaire. For this reason, no additional details or examples can be provided.*

Question 40: Section 23.A of Exhibit E, states that “No express waiver shall affect the default other that the default specified in the express waiver, and that only for the time and to the extent therein stated”, could you cite a

situation/example of this section? **DPL's Response to Question 40:** *If you do not understand the language used in Section 23.A, please consult independent counsel. DPL cannot provide legal advice to you. The terms of the concession agreement will govern the contractual relationship between DPL and the Concessionaire. For this reason, no additional details or examples can be provided.*

Question 41: Exhibit E, Section F-Law Governing: Are the laws of the Commonwealth of the Northern Mariana Islands same as the laws of the United States? **DPL's Response to Question 41:** *DPL cannot provide legal advice to you. Please consult independent legal counsel.*

Question 42: Does DPL take the position that the RFP and related procurement process are governed by any particular CNMI procurement regulations or statutes? If so, which regulations or statutes apply to the RFP?

DPL's Response to Question 42: *DPL does not provide legal advice concerning the applicability of Commonwealth statutes and regulations to each party interested in submitting a proposal. Please consult independent legal counsel for legal advice as to the applicability of particular statutes and regulations.*

Question 43: The RFP states that “[b]y submitting a proposal, the interested firm agrees to enter into a concession agreement in the form attached as Exhibit “E”. Cover Page 1. Is Exhibit “E” subject to any change whatsoever? May it be added to? May parts be deleted? May parts be changed or amended? **DPL's Response to Question 43:** *No material changes will be made to the concession agreement form, and DPL will not allow any party that has submitted a proposal to alter the material terms of its proposal following the deadline for submission.*

Question 44: THE RFP states: “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.” P.S. Section 2 of the Agreement (Exhibit E) states: “The term of this Agreement shall be for a period of five (5) years.” These provisions differ, so which is correct? Will there be an option period or not? **DPL's Response to Question 44:** *An option to renew for an additional five years will be included in the Agreement.*

Question 45: The RFP states: “Concessionaire is required to maintain Managaha Island at its expense with certain expenses being reimbursable by DPL.” P.3. A table follows which shows the reimbursement rates for activities like landscaping and maintenance of infrastructure and equipment. Yet, the Agreement (Exhibit E) states that these same activities are to be performed by the concessionaire “at its own expense.” § 7. There is no mention of reimbursement. These provisions are contradictory. Which is correct? Will there be reimbursement or not? **DPL's Response to Question 45:** *All of the activities included in the table will be reimbursed at the rates indicated in the RFP.*

Question 46: Under Public Law No. 13-16 future collections of the Landing and Use Fee “shall be available for the maintenance and repair of public facilities on Managaha Island in accordance with the terms of the ‘Agreement of Special Recreations Concession (of) Managaha Island,’ entered into on August 31, 2001 by the Board of Public Lands and Tasi Tours Transportation, Inc.” Emphasis added. The RFP and the Agreement (Exhibit E) mention that DPL will collect the Land and User Fee, but neither mentions making those fees available to the Concessionaire. Will DPL make the landing fees available to the Concessionaire as required by law? If so, will it do so to cover all the activities listed in Section 7 (Management and Maintenance of Island) and Section 9D (Landing and User Fees) of the August 31, 2001 Concession Agreement? Is it DPL’s understanding of these two sections that the costs of nighttime security, both forms of insurance, and lifeguards would be reimbursable by the Landing and User Fee? **DPL's Response to Question 46:** *DPL will make*

available appropriate amounts of the landing and user fees for maintenance and repair of public facilities and for other reimbursable expenses pursuant to the RFP and Exhibit E. The costs of night time security, property insurance, and lifeguards are reimbursable.

Question 47: The scope of exclusivity of the concession being offered by DPL has been greatly reduced as compared to the current concession. Specifically, Exhibit E states”

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, 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 Executive Concession Area.

§ 3B (emphases added)

It appears that any company that provides transportation to Managaha can also provide all marine sports and all recreational activities for profit on Managaha (so long as the tour is presold on Saipan or elsewhere). This seems to remove exclusivity from parasailing, banana boat tours, SCUBA rentals and tours, kayak rentals and tours, snorkeling rentals and tours, and beach chair and umbrella rentals. Is this understanding of § 3B correct? Section 3A states: “Concessionaire shall have the exclusive right to operate all commercial concessions on Managaha Island during the term of this Agreement.” Emphasis added. Does § 3B contradict this promise by removing exclusivity from all marine sports and recreational activities sold for profit?

Question 48: The RFP states: “DPL serves as the trustee of public lands... In Line with responsibilities is the duty to maximize the financial returns from the use of public lands.” P.1. If DPL reduces the exclusivity of the concession, the concession will be less valuable to proposers. Does this major removal of exclusivity violate DPL’s fiduciary duty as a trustee of public lands to maximize financial returns?

DPL’s Response to Questions 47 and 48: *This Concession Agreement does not and shall not operate to exclude other marine sports operators from providing transportation to and from Managaha, 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. The concessionaire has the exclusive right to sell to customers on Managaha, but does not possess the right to prevent marine sports operators from using Managaha to pick up customers in order to provide services that were purchased prior to arriving at the island. DPL must comply with Commonwealth law in exercising its fiduciary duties.*

Question 49: Unilateral Rent Increase by DPL. The RFP document states: “[S]hould DPL no longer be able to collect landing fees, rent amounts would need to be adjusted.” The Agreement (Exhibit E) has no provision for increasing the rent in § 6 (Rental Payment). Will DPL be able to increase the rent during the term of the concession or not? If so, will this rent increase be mutually agreed upon or unilaterally imposed by DPL? How will the amount of the increase be determined. **DPL’s Response to Question 49:** *DPL will not unilaterally adjust the amount of rent. Any change to rent would need to be negotiated between the parties and mutually agreed upon through a written amendment to Exhibit E. DPL does not anticipate that it will no longer be able to collect landing fees during the term of the agreement.*

Question 50a: The current concession agreement provides that a lifeguard is required only at the “zoned swimming area.” *The Agreement (Exhibit E) § 12B substantially expands the lifeguarding duty of the concessionaire:*

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.

By “all beach areas surrounding the Island” does DPL mean lifeguards must “monitor, patrol and supervise” around the entire perimeter of Managaha Island? **DPL’s Response to Question 50a:** *To ensure maximum public safety and security on Managaha Island, DPL is presently revising the “Rules and Regulations Regarding the Commercial Use of Managaha Island” to expand the areas to be monitored by lifeguards from the roped off swimming zone to all beach areas surrounding the island during hours of operation.*

Question 50b: Since DPL is setting up this requirement – which does not currently exist at law – at what interval must these lifeguards be placed? Every 200’? Every 300’? What is the total number of lifeguards required to “monitor, patrol and supervise” water activities “at all beach areas surrounding the Island”? **DPL’s Response to Question 50b:** *Lifeguarding is a reimbursable expense as set forth in the RFP. Each party submitting a proposal will need to present a proposal that makes reasonable accommodations to meet these safety requirements.*

Question 51: The Agreement (Exhibit E) § 23G states that “Gross Receipts shall include income derived “from any activity relating to this Agreement **including the transport of passengers to and from Managaha[.]”** (Emphasis added). Is this language intended to include boat transportation to Managaha? Is this language intended to include bus transportation related to boat transportation to Managaha? The gross receipts portion of the rent should only be assessed on activities that are allowed due to the granting of the concession. Inclusion of such activities would exceed what is called for by your regulations. § 145-70-215(c). If DPL intends to assess BGR on boat and bus transportation, what would be the basis for doing so? **DPL’s Response to Question 51:** *Income derived from any activity relating to this Agreement, including the transport of passengers to and from Managaha, shall be included as part of gross receipts. This provision does not limit the phrase “transport of passengers to and from Managaha” to only include boat services. The terms in the Agreement will be interpreted according to the plain language used in the Agreement. The regulations provide that concessions negotiated through RFP may be subject to higher fees based upon an applicant’s proposal or bid amount.*

Question 52: The RFP states: “An additional objective is to have an operation that will make a significant improvement to the feel of the Premises while providing convenience for residents.” P.1. What exactly is meant by “the feel of the Premises”? Without understanding what this means, proposers are unable to respond to this objective. Please clarify. **DPL’s Response to Question 52:** *The “feel of the Premises” has no technical meaning for the purposes of this RFP. The term should be accorded its ordinary meaning. The feel of the Premises simply refers to the atmosphere and experience on Managaha.*

Question 53: Electricity is generated primarily to pump water, push water through a reverse osmosis system, provide water for showering, washing, filling toilets, and operating a septic system. These services are provided equally to residents and tourists, concessionaire customers and non-concessionaire customers. The only usage

of electricity that is solely for the benefit of the concessionaire is for the operation of the office, the gift shop, and the restaurant. Each of these can be separately metered. In order to be fair to the concessionaire, should the electricity charge to the concessionaire be based on actual consumption of electricity as shown by these meters? What is the basis for choosing to have the concessionaire pay 50% of the cost of generating electricity, and why was the percentage increased from 10% in the original RFP to 50% in this RFP? Was this to offset the higher reimbursement for security, lifeguards, and insurance? **DPL's Response to Question 53:** *The terms presented in the RFP represent DPL's attempt to generate the highest revenues for its beneficiaries, provide for proper care of public resources, and ensure a fair agreement that will result in a productive partnership for both DPL and the concessionaire. If an interested party disagrees with the terms as offered by DPL, the party can choose not to submit a proposal. DPL will not answer questions concerning the previous RFP that has already been cancelled. Any questions related to that RFP are moot.*

Question 54: The ECA is an area used by all visitors to Managaha, whether resident or tourist, concessionaire customer of other companies, or persons who are not the customers of anyone. The only areas limited to the concessionaire are the restaurant, gift shop, office, and barbeque pit, of which the concessionaire should pay 100% of the cost for janitorial work; for the remaining areas, 100% of the cost should be paid from the landing fee. With respect to the common areas of the ECA, why should the concessionaire have to pay 50% of the cost for janitorial work? **DPL's Response to Question 54:** *The terms presented in the RFP represent DPL's attempt to generate the highest revenues for its beneficiaries, provide for proper care of public resources, and ensure a fair agreement that will result in a productive partnership for both DPL and the concessionaire. If an interested party disagrees with the terms as offered by DPL, the party can choose not to submit a proposal.*

Question 55: The landscaping within the ECA is enjoyed by all visitors to Managaha, whether resident or tourist, concessionaire customer or customer of others, or persons who are not the customers of anyone. All of the cost for landscaping work within the ECA should be paid from the landing fee. Why should the concessionaire have to pay 50% of the cost for landscaping within the ECA? **DPL's Response to Question 55:** *The terms presented in the RFP represent DPL's attempt to generate the highest revenues for its beneficiaries, provide for proper care of public resources, and ensure a fair agreement that will result in a productive partnership for both DPL and the concessionaire. If an interested party disagrees with the terms as offered by DPL, the party can choose not to submit a proposal.*

Lifeguards

Question 56a: Will this reimbursement cover lifeguard supplies and first aid supplies? **DPL's Response to Question 56a:** *Yes, reasonable amounts related to first aid supplies will be reimbursed.*

Question 56b: Will this reimbursement cover the expenses of a rescue boat, captain, and one crew member? **DPL's Response to Question 56b:** *DPL will consider an offset of costs for all emergency situations that require transport from Managaha Island. However, the concessionaire must submit a breakdown of these costs for DPL's review. Should the concessionaire request for reimbursement of maintaining a rescue boat, captain, and a crew member as part of its daily operation, the concessionaire must provide justification for such request for reimbursement.*

Question 56c: If adequate coverage of the entire island’s beaches, including scheduling time off and rotating shifts, requires a staff of 25 lifeguards, will DPL be willing to reimburse 100% of these costs? **DPL’s Response to Question 56c:** *DPL will provide 100% reimbursement of costs for a staff of up to eight lifeguards. This should allow the concessionaire to maintain five lifeguards working during regular hours of operation. If the concessionaire determines that additional lifeguard staff are necessary, the concessionaire will bear the costs associated with hiring additional personnel.*

Question 57: Why does RFP2 increase the amount of the government’s liability insurance from \$300,000 for bodily injury, \$300,000 for wrongful death, and \$100,000 for general liability coverage per occurrence to \$1,000,000 coverage for each of these categories when the Government Liability Act at 7 CMC § 2202 sets liability limits for the government at \$50,000 for wrongful death, \$100,000 for other torts, and \$200,000 per occurrence? **DPL’s Response to Question 57:** *The purpose of requiring liability insurance coverages in the amounts set forth in the RFP is to protect members of the public and visitors to Managaha by ensuring they could be adequately compensated if they are injured or damaged, in addition to providing liability protection for the CNMI government.*