

**COUNTY OF KAUA‘I DEPARTMENT OF PARKS AND RECREATION
RULES AND REGULATIONS RELATING TO THE USE OF PARKS AND PARK
FACILITIES BY PEDDLERS AND CONCESSIONAIRES**

**PART VI – RULES AND REGULATIONS GOVERNING THE OPERATION OF
CONCESSIONAIRES AT THE SPOUTING HORN PARK**

Under and by virtue of the authority conferred upon him by Chapter 91 of the Hawai‘i Revised Statutes (HRS), Chapter 23, Article 3 of the Kaua‘i County Code 1987, as amended (KCC), and every other enabling power, the Director of Parks and Recreation of the County of Kaua‘i does hereby prescribe the following:

Part I. General Provisions

A. Applicability and Scope.

These rules and regulations govern Concessionaire operations at the Spouting Horn Park, which are under the jurisdiction of the County of Kaua‘i, Department of Parks and Recreation.

B. Purpose.

Under the authority of Chapter 23, Article 3 of the Kaua‘i County Code 1987, as amended, and in accordance with Chapter 102 of the Hawai‘i Revised Statutes, these rules establish uniform regulations for the operation of Concessionaires at the Spouting Horn Park, and uniform processes to acquire a Contract to operate a Concession at the Spouting Horn Park.

C. Definitions.

Whenever used in these rules and regulations, the terms below have the following meanings:

“Concession” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Concession stand premises” means the original individual Concession stand footprint; plus half the distance to the adjacent Concession stand(s) to the sides and back; and the area from the side of the Concession stand to the side roll-up gate, if any; plus any extension of the stand, whether temporary or permanent, not to exceed 12” (inches) outside the front of the Concession stand.

“Concession stands” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Concessionaire” has the same meaning as in Section 23-3.2 of the Kaua‘i County Code.

“Contract” means the written agreement, including the Invitation for Concession Bids, Instructions to Bidders, Exhibits, Concessionaire’s Bid Proposal, and any amendments, between the County and the Concessionaire, for a Concession.

“County” means the County of Kaua‘i.

“Department” means the Department of Parks and Recreation of the County of Kaua‘i.

“Finance Director” means the Director of Finance of the County of Kaua‘i, or their authorized representative.

“Invitation for Concession Bids” means all documents, whether attached or incorporated by reference, used for soliciting bids for Concession stands at the Spouting Horn Park.

“Parks Director” means the Director of Parks and Recreation of the County of Kaua‘i, or their authorized representative.

“These Rules” means the Rules and Regulations Governing the Operation of Concessionaires at the Spouting Horn Park.

Part II. Concession Procedures and Fees

A. Bidding.

1. Bidding procedures shall comply with the requirements of Chapter 102 of the Hawai‘i Revised Statutes.
2. Prospective bidders shall:
 - a. Not less than six calendar days prior to the day designated for opening bids, file a Notice of Intention to Bid and Application to Bid with the Department in accordance with the Invitation for Concession Bids; and
 - b. Meet the minimum qualifications set forth in the Invitation for Concession Bids.
 - i. The Finance Director may investigate the financial status, experience, and records of each prospective bidder, and require additional evidence and information from any prospective bidder, to determine satisfaction of minimum qualifications.
 - ii. The Finance Director shall refuse to receive or consider any bid proposal submitted by a prospective bidder who fails to meet the minimum qualifications or fails to timely submit additional evidence and information requested by the Finance Director. Prior to rejecting a prospective bidder, the following procedures apply:
 - a) The Finance Director shall provide the prospective bidder, in writing, the reason or reasons why the prospective bidder does not qualify to bid;
 - b) The prospective bidder will be allowed to provide a written explanation or further documentation, or both, as proof of having met the minimum qualifications, due within ten calendar days of receiving the Finance Director’s reasons; and
 - c) Within three business days of receipt of the prospective bidder’s written explanation or further documentation, or both, the Finance Director shall notify the prospective bidder in writing of the final decision on whether the prospective bidder has met the minimum qualifications to bid. The Finance Director’s decision is a final decision.

3. Bid Deposits.
 - a. Each bid shall be accompanied by a deposit as required by Section 102-6 of the Hawai‘i Revised Statutes.
 - b. The Parks Director shall identify the specific requirements of the bid deposit in the Invitation for Concession Bids.
4. In accordance with Section 102-5 of the Hawai‘i Revised Statutes, the Finance Director may cancel or reject any and all bids, in whole or in part, or waive any defects, when in the Finance Director’s opinion, such cancellation, rejection, or waiver will be in the best interest of the County.
 - a. Reasons that are “in the best interest of the County” include but are not limited to the following:
 - i. Cancellation or rejection prior to opening bids:
 - a) The County no longer requires the Concession Contracts;
 - b) The Department’s proposed amendments to the Invitation for Concession Bids would be of a magnitude that a new Invitation for Concession Bids is desirable; or
 - c) A determination by the Finance Director that a cancellation is in the public interest.
 - ii. Cancellation, rejection, or waiver after opening bids but prior to award:
 - a) The Concession Contracts are no longer required;
 - b) Modification, addition, or deletion of specifications is needed;
 - c) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith; or
 - d) A determination by the Finance Director that a cancellation, rejection, or waiver is in the public interest.
 - b. A notice of cancellation, rejection, or waiver shall be posted, and the notice shall include a brief explanation of the reason for cancellation, rejection, or waiver; and where appropriate, an explanation that an opportunity will be given to compete on any re-solicitation.

B. Advertising, Readvertising, and Rebidding.

1. Each initial Invitation for Concession Bids for five-year contracts shall include all eight Concession stands.
2. All advertisements for bid shall comply with the requirements of Section 102-4 of the Hawai‘i Revised Statutes.
3. If all eight Concession stands are not awarded through the bidding process, the remaining Concession stands shall be readvertised for bid under the same terms and same duration of the current five-year term and any allowed Contract extension.
4. If any Contract is relinquished or cancelled before the expiration of the Contract term, the Department shall readvertise and conduct new bidding for the resulting vacancy for the duration of the existing five-year term and any allowed Contract extension.

5. If any Concession stand becomes vacant during the two-year extension period, the Department shall readvertise the stand for bid for the duration of the Contract extension.
6. Existing Concessionaires may bid on Concession stands that become available during their Contract term, if it is determined by the Finance Director to not be to the detriment of the County. However, any Concessionaire who is awarded another Concession stand under this section must relinquish their original Concession stand.
 - a. In making this determination, the Finance Director shall consider the existing Concessionaire's current monthly rent versus their bid amount.

C. Upset Bid Price.

1. Bidders shall bid the dollar amount they propose to pay as monthly rent.
2. All bids shall be subject to an upset bid price which shall be in the Invitation for Concession Bids.
3. The upset bid price shall be determined by the Parks Director, in consultation with the Finance Director, and shall not be less than three thousand five hundred dollars (\$3,500.00) per month for each individual Concession stand, except for the following:
 - a. If a Concession stand is readvertised for bid under Part II, Section B.4. or Part II, Section B.5. of these Rules, the upset bid price shall not be less than the lowest monthly concession rent in place at the time of readvertisement.
4. The determination of the upset bid price shall include consideration of the following:
 - a. The average of all Concessionaire bids received by the County, including non-awarded bids, from the most recent regular solicitation for 5-year Concession contracts for the Concession stands at the Spouting Horn Park.
 - b. The average Concessionaire monthly rent from the most recent regular solicitation for 5-year Concession contracts for the Concession stands at the Spouting Horn Park.
 - c. The cost to the County of maintenance, upkeep, and improvements for the concession facility at the Spouting Horn Park.
 - d. The lease price for similar retail vendor facilities on Kauai, if any, with due consideration for the terms and conditions of a Concessionaire contract at the Spouting Horn Park, including the uniqueness of a retail space within the Spouting Horn Park that includes dedicated Concession stands.

D. Contracts.

1. All Contracts shall be processed and awarded in accordance with the requirements of Chapter 102 of the Hawai'i Revised Statutes.
2. The Finance Director shall award a Contract, if any, to the responsible bidder proposing to pay the highest monthly rent, if such bidder qualifies by providing the performance bond as required by Section 102-11 of the Hawai'i Revised Statutes and proof of insurance as required by Part II, Section F. of these Rules.
 - a. Contracts shall be awarded in an ascending order until all Concession stands have been awarded, starting with Concession stand 1 and ending with Concession stand 8.
 - b. A successful bidder awarded a Concession stand shall not be considered for any additional stand award.

- c. In the event of a tie bid or bids, the Contract award shall be made by drawing lots at the place, time, and method prescribed by the Finance Director.
3. Each Contract term shall be a period of five years, beginning on the date designated by the County in its "Notice to Proceed," and expiring automatically after five years, without notice to the Concessionaire.
 - a. The Finance Director may extend the term of a Contract for up to two additional years, on a month-to-month basis or for other terms or periods, if the Concessionaire is in compliance with all terms and conditions of their Contract and these Rules.
 - b. Concessionaires who wish to extend their Contract term must make a request in writing to the Finance Director at least one hundred fifty calendar days before the end of the five-year term. If a request for a contract extension is not made within this time frame, or a request for contract extension is denied by the Finance Director, then the Contract will expire automatically as stated in Part II, Section D.3. of these Rules.
4. The Concessionaire shall notify the Parks Director within five business days of any changes regarding the information provided in the Contract.
5. Contracts are nontransferable.
6. All Contracts shall include the following requirements, or similar statements expressing the intent of these requirements. The Parks Director may include further specifications for the below requirements, and include additional requirements, as deemed necessary, in the Invitation for Concession Bids.
 - a. The Concessionaire shall agree to indemnify, defend, and hold harmless the County and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands, arising out of or resulting from the performance of the Contract and operation of the Concession, caused in whole or in part by any act or omission of the Concessionaire or the Concessionaire's employees, officers, agents, or subcontractors, and to reimburse the County for any damages, losses, costs or expenses, including attorneys' fees, incurred in connection therewith.
 - b. The Concessionaire shall assume the risk of any loss, damage, or theft to the Concessionaire's property kept in the Spouting Horn Park, and the Concessionaire's use of the County's property shall be at the risk of the Concessionaire only.
 - c. The Finance Director may cancel or pause a Concession Contract without cause, when the interests of the County so require, by giving the Concessionaire written notice of the cancellation or pause of the Contract. The written notice shall specify when the cancellation or pause becomes effective. Any rent payments already made by the Concessionaire for a time period after the cancellation or pause shall be refunded to the Concessionaire, on a pro rata basis if necessary. The Concessionaire shall bear any other expenses or losses in full, with no recourse against the County.
 - d. The Concessionaire shall comply with all applicable federal, State, and County laws, ordinances, and rules and regulations.
 - e. The Concessionaire shall conduct the Concessionaire's activities and perform the Contract in a manner that does not discriminate against any person in violation of federal, State, or County law; and shall not discriminate against any employee or applicant for employment in violation of federal, State, or County law.

7. The Parks Director shall include a provision addressing breach of contract and any sanctions in the Invitation for Concession Bids.

E. Performance Bond.

1. Before any Contract is executed, the bidder who is awarded a Contract must give security for the full and faithful performance of the Contract as required by Section 102-11 of the Hawai'i Revised Statutes.
2. The performance bond shall be held by the County for the term of the Contract and shall be returned to the Concessionaire after the termination of the Contract if the Concessionaire is not in default.
3. The Parks Director shall identify the specific requirements of the performance bond in the Invitation for Concession Bids.

F. Insurance.

1. Concessionaires must maintain, on a primary basis and at the Concessionaire's sole expense, at all times during the life of the Concessionaire's Contract, the insurance coverages and limits, including endorsements, described in the Insurance section of the Invitation for Concession Bids. The minimum limits and coverages shall be determined by the Finance Director.
2. Concurrent with the execution of a Contract, the Concessionaire shall furnish the County with original certificates and endorsements effecting required coverage.

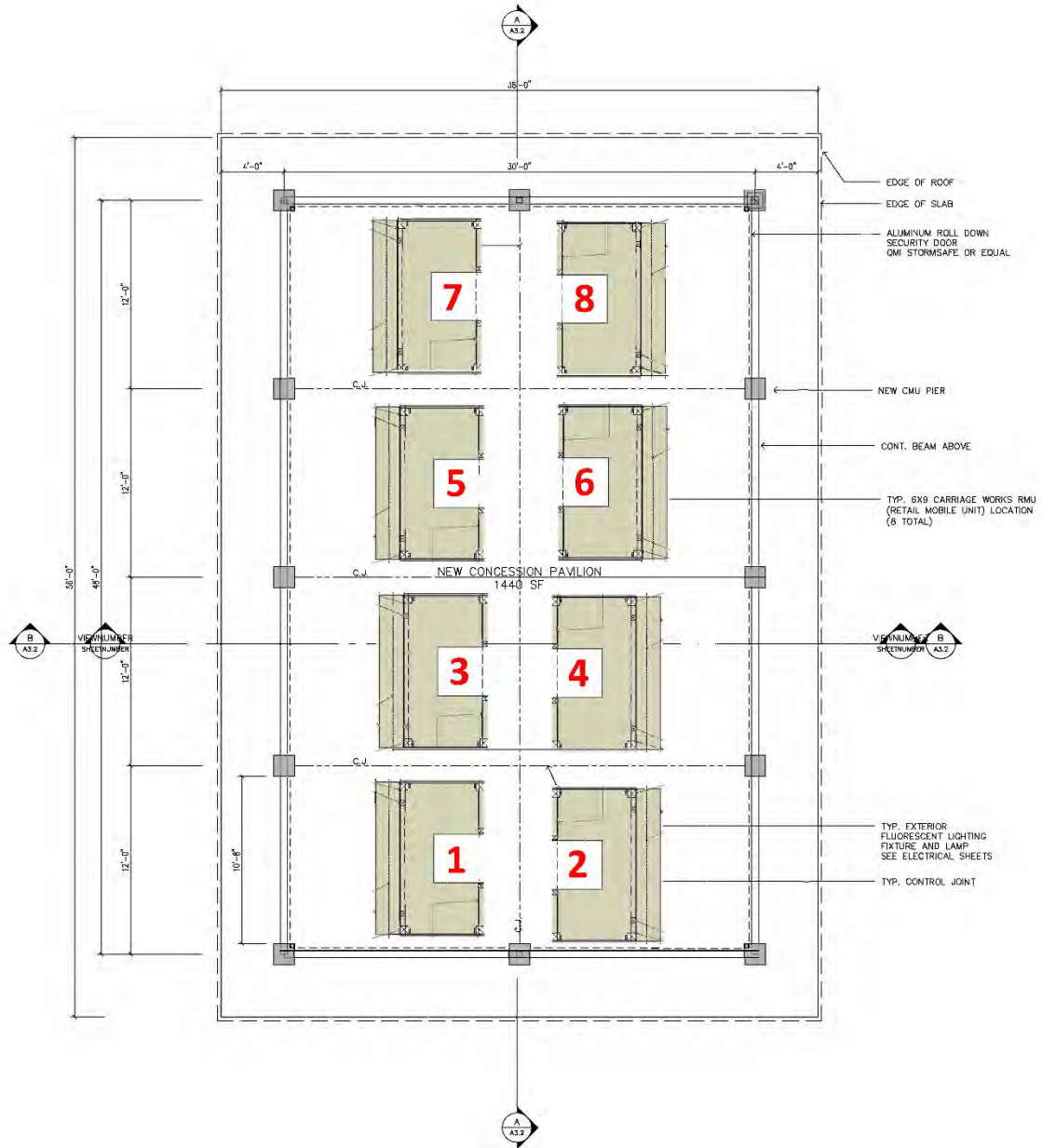
G. Scope of Concession.

1. Upon the execution of a Contract, a Concessionaire shall be given sole rights to conduct a specific commercial activity at a designated Concession stand at the Spouting Horn Park.
2. The Concessionaire, by the Contract, and if approved by the Parks Director, shall have the right to sell curios, handcrafted jewelry, Polynesia goods, Kaua'i made products, and other related products.
 - a. Prior to the Contract execution, the Concessionaire awarded a Concession stand must furnish a list of products to be sold at the Concession stand to the Parks Director for review and approval.
 - b. It is highly encouraged that items for sale at the Concession stand are made entirely or partly in Hawai'i.
3. Concessionaires shall not sell food items; clothing; watches; beverages; ice products; services; or any other commodities, goods, and products not approved by the Parks Director.
4. Once a Contract is awarded, the Concessionaire shall not be allowed to change the commercial activity or Concession stand specified in their Contract, except if allowed by Section 102-10 of the Hawai'i Revised Statutes or Section 102-13 of the Hawai'i Revised Statutes.

H. Stall Configuration and Plot Plan

1. The location of each Concession stand numbered 1 to 8 is shown in Part II, Section H.5. of these Rules.
2. Any extension of the Concession stand, whether temporary or permanent, cannot exceed 12" (inches) outside the front of the Concession stand.
3. No extensions are permitted on the sides or rear of the Concession stand.

4. Concession stands shall not be moved, repositioned, or relocated from their original position.
5. The stall configuration is as follows:



PAVILION FLOOR PLAN
SCALE: 1/4" = 1'-0"

Part III. Concession Operations

A. General Conditions.

All Concessionaires are subject to the following general conditions. The Parks Director may include further specifications for the below conditions, and include additional conditions, as deemed necessary, in the Invitation for Concession Bids.

1. All Concessionaires are prohibited from selling or conducting any part of their operations in any area other than the Concession stand area specified in and designated in the Contract.
2. Signs and Advertising.
 - a. All advertising material, which includes but is not limited to flyers, posted signage, and media advertisement, shall be subject to the prior written approval of the Parks Director.
 - b. Signs, including commercial notices or advertisements, shall not be displayed, posted, or distributed outside of the authorized location specified in the Contract.
 - c. No hawking, solicitation, or unauthorized advertising shall be made by the Concessionaires or their employees on or outside of the Concession stand premises or on a public address system.
3. Parking.
 - a. Each Concessionaire shall be allowed to utilize one parking stall within the Spouting Horn Park parking lot. The Concessionaire's parking stall shall be defined in the Contract.
 - b. In addition, Concessionaires may use the designated loading and unloading area to transport equipment, supplies, goods and wares to and from their vehicle and designated Concession stand area. The loading and unloading area shall be defined in the Contract.
 - c. No vehicles shall be permitted to stand or park next to or adjoining the Concession stand premises.
 - d. Designated bus parking stalls or other public parking stalls shall not be blocked by Concessionaires and their employees' vehicles, equipment, and personnel.
4. Equipment.
 - a. Concessionaires must provide all equipment necessary for the operation of their Concession.
 - b. Concessionaires are not allowed to install equipment that requires alteration, modification, or affixing to the Concession stand premises.
 - c. Concessionaires must remove all of their equipment at the end of each day.
 - d. All displays and equipment must be within the confines of the interior area of the Concession stand.
 - i. All other miscellaneous equipment, excess stock, boxes, cartons, coolers, paraphernalia, and other similar items can be stored within the confines of the interior area of the Concession stand; however, it must be properly hidden from view and neatly stored at all times.

- ii. No other storage is permitted on the Concession stand premises.
- 5. Conduct of Business.
 - a. In conducting their operations, Concessionaires shall not:
 - i. Create, commission, or maintain a nuisance on the Concession stand premises or in the Spouting Horn Park;
 - ii. Cause or create unusual or objectionable noise, or noxious smoke, gasses, vapors and odors; or
 - iii. Use radios, stereos, or amplified music.
 - b. Concessionaires shall not use or allow the Concession stand premises to be used for any illegal purpose, indecent activity, or lodging or sleeping purposes.
 - c. Concessionaires shall not permit disorderly persons to remain upon or loiter within the Concession stand premises.
- 6. Cleaning and Maintenance: Concessionaires shall be responsible for the general cleaning and upkeep of their designated Concession stand premises as well as the pavilion common areas, which includes but is not limited to sweeping and mopping of the floor, maintaining assigned Concession stands, and supplying and emptying of rubbish cans within the immediate area surrounding the Concession stand premises. The Parks Director shall outline specifics in the Invitation for Concession Bids.
- 7. Concessionaires shall display their State of Hawai‘i General Excise Tax License and Workers’ Compensation Certificate, if applicable, in clear public view during operational hours.
- 8. Concessionaires shall not sublet the whole or any part of the Concession stand premises.

B. Hours of Operation.

- 1. Concessionaires shall not commence set-up of their equipment and stock at their Concession stand premises before 6:00 a.m., nor remain at the Concession stand premises with their equipment and stock later than 7:00 p.m., or as otherwise authorized by the Parks Director.
- 2. All selling activities at the Concession stand premises shall commence no earlier than 7:00 a.m. and cannot exceed beyond 6:00 p.m., or as otherwise authorized by the Parks Director.

C. Duties of Concessionaires.

Concessionaires may be required at the discretion of the Parks Director to perform the following operational duties at the Spouting Horn Concession Pavilion. The Parks Director shall specify any required duties, and may include additional requirements and duties as deemed necessary, in the Invitation for Concession Bids.

- 1. Opening, Closing and Locking Pavilion: Concessionaires may be issued keys to open and close bays of the pavilion that are adjacent to their respective Concession stands. Concessionaires with Concession stands located on the corners of the pavilion may be required to open, close, and lock two bays.

D. Repairs.

- 1. Concessionaires shall be responsible for the cost of all repair or replacement work for damages to the Concession stand premises, except for roof damage and normal wear and tear. The County’s only responsibilities shall be the maintenance and repairs of the roof, and

repairs of the Concession stand premises for normal wear and tear. This section is subject to the exceptions below.

- a. Exception: If damages to the roof are caused by Concessionaire or by fire from within the Concession stand premises, the Concessionaire's responsibility for the cost of all repairs or replacement work shall include the cost of repair or replacement work for the roof damages.
 - b. Exception: If damages to the Concession stand premises are caused by an act of God, disaster, emergency not caused by the Concessionaire, or other event that is specified in the force majeure clause of the Contract as excusing performance under the Contract, the Concessionaire shall not be responsible for repair or replacement work for damages caused by those events.
2. The Parks Director has the final decision in determining the responsible party for damages.
 3. Prior to any repair or replacement work, Concessionaires must obtain written approval from the Parks Director. All damages shall be repaired or replaced to the satisfaction of the Parks Director.

E. Security Measures, Alterations, and Improvements.

1. Security Measures
 - a. Concessionaires may provide and install, at their expense, security measures necessary for the operation of the Concession.
 - b. Prior to the provision or installation of any such security measures, Concessionaires must obtain written approval from the Parks Director. If approved, they must be installed in conformity with all applicable statutes, rules, regulations, and code sections.
2. Alterations or Improvements
 - a. Concessionaires shall not make alterations or improvements, including the extensions described in Part II, Section H.2. of these Rules, to the Concession stand premises without obtaining prior written approval from the Parks Director.
 - b. Concessionaires shall promptly discharge all debts incurred in making any alterations or improvements, and within sixty calendar days after the completion, must submit to the Parks Director proof of such payments.
3. Any permanent addition or fixture to the buildings or the Concession stand premises shall become the property of the County, without cost to the County, at the expiration of the Contract.

F. Inspection by the County.

1. The County may enter the Concession stand premises, without prior notice, at all reasonable times, for the purpose of:
 - a. Examining the state of repair and condition of the Concession stand premises and the equipment; and
 - b. Determining whether these Rules and the terms and conditions contained in the Contract are being fully and faithfully observed and performed.