

COUNTY OF KAUAI  
DEPARTMENT OF FINANCE

LT. GOVERNOR'S OFFICE

RULES AND REGULATIONS  
RELATING TO CHARITABLE AND  
NON-PROFIT CORPORATION  
VENDING STALL AT  
POIPU SPOUTING HORN PARK

1987 FEB 20 9:19 AM '87

REC'D. BY

Pursuant to Ordinance No. 485 approved on March 27, 1986,  
the following rules and regulations are adopted by the Director of  
Finance of the County of Kauai, State of Hawaii:

RULE 1 - DEFINITIONS

1.1 - Definitions.

a. Whenever used in these rules and regulations, the terms shall  
be taken to have the following meaning:

- 1) "County" means the County of Kauai;
- 2) "Contract" means the written agreement for the concession  
between the County and the Concessionaire. It shall include  
the Notice to Bidders, the Bid Proposal, the General Instruc-  
tions to Bidders, Exhibits, and the Specifications for the  
concession.
- 3) "Officer-in-Charge" means the County Engineer of the County of  
Kauai or his authorized representative.
- 4) "Director of Finance" means the Director of Finance of the  
County of Kauai or her authorized representative.
- 5) "Vendor Concessionaire" means the charitable and non-profit  
corporation, firm or partnership duly registered with the  
State of Hawaii in accordance with the provisions of  
Chapter 467B, HRS, as amended, under contract with the  
County of Kauai to perform vending activities at Spouting Horn  
Park, Koloa, Kauai and who have legal and financial respon-  
sibility and authority to conduct vending activities.

b. Whenever the context of the contract required it, the masculine  
shall be deemed to embrace and include the feminine and neuter and the  
singular shall be deemed to embrace and include the plural.

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RULE 2 - QUALIFICATIONS  
NOTICE OF INTENTION - APPLICATION - INELIGIBILITY

2.1 - Qualification.

a. The minimum qualifications of each prospective vendor concessionaire shall be:

Three (3) years experience in a going concern operating a vendor concession, general store, or comparable business under an established place of business facility within the County of Kauai, of which not less than two (2) years experience shall be in manufacturing, processing, developing or producing of Kauai's products including products which are mined, excavated, raised or grown on the Island of Kauai, and with a current State of Hawaii Certificate of Registration of Charitable Organization in accordance with the provisions of Chapter 467B, Hawaii Revised Statutes, as amended, and further with a current State of Hawaii excise tax license and County of Kauai Business and Occupation License and Identification Card prior to making application.

b. Each prospective vendor concessionaire must file a Notice of Intention to Bid and Application to Bid as prescribed by the Director of Finance, answered in full and sworn to before a notary, providing evidence of the minimum qualification requirements specified herein-above.

c. The Director of Finance reserves the right to investigate the financial status, experience and records of each prospective vendor concessionaire, and to require additional evidence and information from any prospective vendor concessionaire to determine qualifications. Should a prospective vendor concessionaire fail to meet the qualifications stated herein or fail to promptly submit additional evidence and information requested by the Director of Finance, the Director of Finance may refuse to receive or consider any bid proposal submitted by such vendor concessionaire.

d. The Director of Finance shall notify all prospective vendor concessionaires of their qualification status on the above-mentioned requirements.

2.2 - Ineligibility.

a. Any prospective vendor concessionaire who HAD or HAS a concessionaire contract with the County of Kauai which expired on the date established by the Director of Finance, who defaulted on any provisions of said contract and has not fully paid their rental fee on the date established by the Director of Finance, shall be ineligible to submit a bid proposal.

b. The Director of Finance shall notify all prospective vendor concessionaires as to their qualification status on this requirement.

RULE 3 - BID PROPOSALS, CONTRACT  
AND COMMENCEMENT OF OPERATION

3.1 - Bid Proposals.

All bid proposals shall be submitted on the official forms furnished by the Director of Finance. The Director of Finance shall reject all bid proposals submitted on other than the official bid form or which modifies, adds or deletes any term, consideration, or condition, other than those contemplated by the Notice to Bidders, the Bid Proposal Form, the General Instructions to Bidders, and the Specifications. Sealed bids showing percentage bids, or bids showing graduated rental payments shall also be rejected.

Bids must be signed in ink by the person or persons duly authorized to sign bids in the space provided for signature on the bid form.

If Bidder is a Corporation, such corporation must be incorporated and organized in accordance with Chapter 416, Hawaii Revised Statutes, as amended. In addition, the title(s) of the officer(s) signing must be stated and the corporate seal must be affixed to or beside the signature. Also, a certified, sealed copy of a resolution of the Board of Directors of the Corporation, authorizing the corporation to so bid (and accept the award, if the successful bidder) and authorizing the officer(s) signing to execute all necessary documents in connection therewith, shall be attached thereto.

If the Bidder is a Partnership, such partnership must be registered in accordance with Chapter 425, Hawaii Revised Statutes, as amended. In addition, the title(s) of person(s) signing must be stated on an affidavit of the Partnership and must be attached with the bid which evidences the authority of the signer(s) to sign the bid and all other necessary documents in connection with the bid for the Partnership.

A bidder MAY NOT submit more than one proposal document under the same or different names. The name of the bidder must be the same as that registered on all of the following Documents specified hereinbelow:

- a. Current State of Hawaii Certificate of Registration of Charitable Organization;
- b. Current State of Hawaii General Excise Tax License; and
- c. Current County of Kauai Business and Occupation License and Identification Card.

If a bidder submits more than one bid proposal, all bid proposals submitted by him shall be rejected. Without limiting the generality of the foregoing provisions, a person shall be considered to have submitted more than one bid which shall include but not limited to the following:

- a. A joint venture, partnership or corporation submitting a bid where a person owning, directly or indirectly more than 25% interest in such joint venture, partnership or corporation has also submitted a bid; and

- b. A joint venture, partnership or corporation submitting a bid where a person owns directly or indirectly, more than 25% interest in such joint venture, partnership or corporation also own more than 25% interest in another joint venture, partnership or corporation which has submitted a bid.

The bid price shall be printed in ink or typewritten. Errors may be crossed out and corrections printed in ink or typewritten, but must be initialed in ink by the person or persons signing the bid.

If there is reasonable grounds to believe that collusion exists between two or more bidders, all of the bids of the parties to such collusion shall be rejected and the parties to such collusion shall be prohibited from bidding on future contract.

### 3.2 - Bid Price.

No upset monthly rental bid price shall be established by the Director. Each bidder shall bid the dollar amount he proposes to pay as monthly rental.

### 3.3 - Withdrawal of Bid.

No bidder may withdraw his proposal after the time of the bid opening without forfeiture of his bid deposit as prescribed by Law. The Director of Finance shall have the right to hold all bids received for a period of thirty (30) calendar days from the date of opening, during which time no bids may be withdrawn unless otherwise required by Law.

### 3.4 - Award of Contract.

- a. The Director of Finance reserves the right to reject any and all bids, or waive any defects when, in her opinion such rejection or waiver will be in the best interest of the County.

- b. The Director of Finance reserves the right to award to the responsible bidder proposing to pay the highest monthly rental. The award shall be by written notice and shall be as of the date therein specified.

- c. In the event of a tie bid or bids for any item, the contract award shall be made by lottery at the place, time and method as prescribed by the Director of Finance.

### 3.5 - Execution of Contract.

Within ten (10) calendar days after receiving the contract documents from the County, or within such further time as the Director of Finance may allow, the successful vendor concessionaire shall execute and submit to the Director of Finance, the contract together with the security required under Rule 10 and proof of insurance required under Rule 11 as specified hereinafter. The Director of Finance reserves the right to cancel an award at any time before the signing of the contract by the County.

### 3.6 - Commencement of Operation.

After the contract is executed by the County, the Director of Finance shall issue to the vendor concessionaire a written "Notice to Proceed" designating the official commencement date of the contract and authorizing the opening of business, by certified mail, return receipt requested.

### RULE 4 - TERM OF CONTRACT

#### 4.1 - Term of Contract.

The term of the contract shall commence on the date designated by the County in its "Notice to Proceed" and ending 12 noon on June 30, 1991, as provided in Ordinance No. 485, unless said term is sooner terminated as specified hereinafter or as amended by the County.

### RULE 5 - SCOPE OF VENDOR CONCESSION

#### 5.1 - Vendor Concession.

The Concessionaire, by the contract, shall have the right to sell all types of products that are manufactured, processed, developed or produced on the Island of Kauai, including products which are mined, excavated, raised or grown on the Island of Kauai, and such other related Kauai products as approved by the Director of Finance.

Further, the Concessionaire shall have the right to sell food and non-alcoholic beverages all in strict compliance with the State of Hawaii Board of Health established requirements, provided however, that the preparation of food and non-alcoholic beverages at the concession premises is PROHIBITED.

The Concessionaire shall not sell any type of services or any commodities, goods, products, except food and beverages, that are not manufactured, processed, developed, produced, mined, excavated, raised or grown on the Island of Kauai and any other services, commodities, goods, products not approved by the Director of Finance in the designated premises areas as specified hereinunder.

### RULE 6 - PREMISES

#### 6.1 - Premises.

The designated location area of the charitable and non-profit corporation booth and premises shall be the area designated by the Director of Finance.

### RULE 7 - RENTAL AND PAYMENT

#### 7.1 - Rental and Payment.

The monthly rental to be paid shall be the monthly rental bid by the Concessionaire.

## 7.2 - Payment.

- a. Monthly Rental. The Concessionaire shall pay to the County without notice or demand, the monthly rental due before the first calendar day of the month for which the rent is applicable. If the first period of operation is less than a full month, then the following formula shall apply:

$$\frac{\text{No. of contractual days of operation}}{\text{No. of days in month}} \times \text{monthly rental} = \text{rent}$$

The payment for the first period of operation shall be made within five days after the date established in the Notice to Proceed.

- b. Payment. All checks shall be made payable to the "Director of Finance, County of Kauai" and paid at the Treasury Division, Department of Finance, County Annex II, Building "B", 4280-A Rice Street, Lihue, Kauai, Hawaii 96766.

Failure to pay any part of the rental when due shall constitute a breach of contract and shall be grounds for termination of the contract by the County. The concessionaire understands and agrees that during the term of the contract, whenever the second (2nd) consecutive delinquency in rental monthly payment due occurs, shall constitute automatic termination of the contract without prior notification.

Without prejudice to any of the other remedies herein reserved to the County, a service charge at the rate of 1% per month including any fraction of the month shall be assessed for any overdue payment of rent.

## RULE 8 - TAXES AND OTHER CHARGES

### 8.1 - Taxes and Other Charges.

- a. Taxes. The Concessionaire shall pay any and all applicable taxes, attributable to the concession operation and all charges incurred or assessed against the operation of the concession.
- b. Utilities. Hook-up and use of the electricity from the County facilities and hook-up to the Park Water System for the concession premises is PROHIBITED. The concessionaire shall, at no cost to the County, contract, pay for, and at all times during the term of the contract be responsible for telephone services and maintenance thereof to include and not limited to telephone equipment, service lines and appurtenances in the event of loss, damage and theft.

## RULE 9 - OPERATIONAL CONTROL

### 9.1 - Operational Control.

- a. Hours of Operation. Hours of operation, including set-up, 7:00 a.m. to 7:00 p.m. daily or as otherwise authorized by the Director of Finance. In addition, the concessionaire shall not commence set up of their equipment and stock at their concession premise before 7:00 a.m., nor remain at the premises with their equipment and stock later than 7:00 p.m. All selling activities at the premises shall commence no earlier than 7:00 a.m. nor exceed beyond 7:00 p.m. All Concessionaires shall completely vacate their respective premises by 7:00 p.m. or as otherwise authorized by the Director of Finance.
- b. Equipment. The Concessionaire shall provide all equipment necessary for the operation of the concession. No installation of equipment which requires alteration, modification or affixing to the booth premises shall be permitted. The Concessionaire shall remove all of his equipment at the end of each day. Stock displays and required equipment as specified hereinabove shall be within the confine of the interior area of the booth. All other equipment, excess stock, boxes, cartons, coolers, paraphernalia and other similar items can be stored within the confine of the interior area of the booth, however at all times shall be properly hidden from view and neatly stored. No other storage shall be permitted on the booth premises.
- c. Security Measures. The Concessionaire, at his option, may provide and install security measures necessary for the operation of the concession. All such security measures shall be subject to the prior approval of the Officer-in-Charge and the Director of Finance and shall be installed in conformity with all applicable statutes, rules, regulations and ordinances. Security measures on the concession booth premises which requires alteration, modification, or affixing to the premises shall not be permitted without the prior written consent of the Officer-in-Charge and the Director of Finance.
- d. Prohibited Uses. The Concessionaire is prohibited from selling in any area other than from the booth area specified in and designated in the contract. The Concessionaire shall not permit the concession booth premises to be used for any illegal purpose, immoral or indecent activity, nor for camping, cooking, sleeping purposes including leaving equipment, entertainment, other displays in addition to table displays, play activities, non-vending business activities, nor shall the Concessionaire permit disorderly persons to remain upon or loiter within the concession areas.

- e. Conduct of Business. The Concessionaire shall conduct his operation in such manner as to avoid the following:
- 1) Creation, commission or maintenance of a nuisance on the premises, or
  - 2) Causing or creation of unusual or objectionable noise, or noxious smoke, gases, vapors and odors.
- f. Attire. The Concessionaire and their employees shall be neatly attired during the hours of operation. Aloha and Hawaiian motif clothing are recommended, but not a compulsory requirement.
- g. Vehicle. All Concessionaire and their employees shall be parked in the public parking lot as designated by the Director of Finance. No vehicles will be permitted to stand or park next to or adjoining the concession booth premises. Tourist and visitor buses and vehicles shall be given first priority in parking. Designated bus parking stalls or other visitor parking stalls shall not be blocked by Concessionaires' vehicles and their employees, equipment and personnel. Loading and unloading shall take place only at the area to be designated by the Officer-in-Charge.
- h. Maintenance and Clean-up. The Concessionaire shall at all times keep and maintain his booth premises, equipment, supplies, and all areas used or assigned in a clean and sanitary condition to the satisfaction of the Officer-in-Charge or his duly authorized representative. This area shall also include the booth surrounding areas as follows: Approximately four (4) feet front; six (6) feet on both sides; and ten (10) feet at rear. The Concessionaire shall be responsible for clean-up of any trash, rubbish, garbage and other unsightly objects originating from the concession operation within the immediate area surrounding the concession booth premises as specified hereinabove.

If the Concessionaire, after receiving written notice from the Officer-in-Charge, fails within five (5) days after receiving such notice to maintain or clean-up the concession booth area as required, then the contract shall be deemed to have been breached and the County of Kauai shall have the right to terminate the Contract.

- i. Repairs and Replacement. The County shall be responsible for the cost of repair work to the concession booth premises including the cost of repairs or replacements because of damage to the concession booth premises caused by malicious mischief, vandalism or unlawful entry by person or persons other than the respective concessionaire.



The Concessionaire shall be responsible for the cost of any repair work to the concession booth premises including the cost of repairs or replacement because of damage caused by Concessionaire or his staff or employees. All such damages shall be replaced or repaired to the satisfaction of the Officer-in-Charge. Further, it is agreed and understood that the Officer-in-Charge shall be the sole judge in determining the responsible party causing said damages.

- j. Employees. It is the responsibility of the Concessionaire to instruct their employees and staff on all contract provisions and the impact of contraventions thereof. The County shall have the right to eject from the premises any employee of the Concessionaire whose conduct is improper, or offensive.
- k. Change of Address and Notification Point. The Concessionaire shall submit in writing to the Officer-in-Charge and Director of Finance, before commencing first day of operation, the name, address, telephone number and any other pertinent information, a person with the authority as agent of the concessionaire in his or her absence at any and all times, to receive civil suit summons, and who will be available to respond within twenty-four (24) hours, to the County on any violations, communications, inquires and other matters deemed necessary. The Concessionaire hereby acknowledges that this procedure is necessary and acceptable to establish a direct channel of communication.
- l. Concessionaire Employees, Staff, Families and Animals. The Concessionaire shall not permit any person or persons not actively engaged in vending activities as specified under this contract, to loiter or conduct business in any manner at or on the booth premises. Further, shall not permit employee and staff family members to loiter or conduct play activities on the booth premises or on the paved walkways and shall not utilize any portion of the booth premises as a day care center for any person. Concessionaire shall be held responsible for controlling the activities and conduct of the employees and staff family members at the premises during normal operating hours. ANIMALS, BIRDS, FISHES, OR OTHER LIVE PETS ARE PROHIBITED ON OR AT THE BOOTH PREMISES.
- m. Signs and Advertising. No signs or advertising is permitted except the following:
  - 1) One (1) fixed booth sign which shall conform to the requirements of the County of Kauai's Sign Ordinance, and must be approved as to the appropriateness, sizes, design, installation and location by the Officer-in-Charge. It is intended that the above booth signs shall be uniform in appearance and installation in-so-far-as it is reasonably possible.

- 2) Stock and display item price tags limited to nine (9) square inches or smaller.
- 3) Credit card advertising logos limited to twenty (20) square inches or smaller.
- 4) Brochures for handout limited to display or stock.
- 5) Descriptive advertising copy, posters, or pictures and sketches limited to fifty (50) square inches.
- 6) Business cards
- 7) Samples of stock items
- 8) Items for sale

No hawking, solicitation of unauthorized advertising shall be made by the Concessionaire or his employees on our outside of the premises or on a public address system.

- n. Non-discrimination. The Concessionaire shall operate the concession and render the services required without discrimination as to race, sex, creed or religion.
- o. Inspection by the County. The County shall have the right to enter the concession booth premises at all reasonable times for the purpose of determining whether the terms, covenants, and conditions contained in the contract are being fully and faithfully observed and performed.
- p. Vending Machines. No vending machines shall be used or installed within the concession booth premises.
- q. Complaints. All complaints (except in the case of an emergency) by the Concessionaire, their employees and staff, shall be in writing, prepared in triplicate form, properly executed and shall be submitted as follows:
  - 1) Original to Officer-in-Charge;
  - 2) Copy to Director of Finance;
  - 3) Copy for Concessionaire's files;

within ten (10) days of an apparent violation of the contract provisions, rules and procedures, ordinances and laws. The complaint must describe the violations in sufficient terms for the respondent to be able to respond and the County to initiate appropriate action as necessary. All employees and staff

complaint(s) shall be channeled through and approved by their employer. VERBAL COMPLAINTS OF AN EMERGENCY NATURE, such as physical injury to persons, fights, riots, etc., will be accepted at any time during normal working hours.

- r. Display of Licenses, Permits and Other Certificates.  
Concessionaire shall display the current State of Hawaii Certificate of Registration of Charitable Organization, State of Hawaii General Excise Tax License, County of Kauai Business and Occupational License, Workman Compensation Certificate, if applicable, in clear public view during operational hours. All of the above-mentioned documents must bear the same Concessionaire's Corporation of firm name, address as in the contract documents. Any difference must be explained in writing and approved by the Director of Finance. Any unapproved differences, shall constitute a breach of contract and shall be grounds for termination of the Contract by the County.

#### RULE 10 - PERFORMANCE BOND

##### 10.1 - Performance Bond.

The Concessionaire shall give as security for the full and faithful performance of the contract by the Concessionaire, a bond in an amount equal to three (3) months rental rounded to the nearest hundred dollars. The bond shall be held 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. The bond, if other than cash or negotiable security, shall have a surety or sureties thereon as prescribed by Section 102-12, Hawaii Revised Statutes, as amended. Such surety or sureties shall be subject to the approval of the Director of Finance and shall be required to justify as prescribed by said Section 102-12, HRS, as amended.

In the event the Concessionaire elects to furnish Cash as security, it is understood that no interest shall be paid by the County on such deposit.

The form of the Bond shall be as prescribed by the Director of Finance.

#### RULE 11 - INSURANCE

##### 11.1 - Insurance.

The Concessionaire shall, at his expense, procure the insurance listed below, except as specified under "D" hereinbelow, from insurance companies authorized to do business in Hawaii, and maintain such insurance throughout the term of the contract. Copies of or certificates of the insurance policies shall be filed with the Director of Finance, such policies shall contain a clause whereby the insurance company agrees:

1. to give thirty (30) days written notice to the Director of Finance of any cancellation or alteration of such policies, and
2. to name the County of Kauai as additional insured.

A. COMPREHENSIVE GENERAL LIABILITY INSURANCE

- a. Bodily Injury Per Occurrence . . . . . \$100,000.00
- b. Property Damage Per Occurrence . . . . . \$ 10,000.00

B. WORKMEN'S COMPENSATION INSURANCE

Against all claims of the Concessionaire's employees, working in any capacity, whose duties require their presence on the booth premises.

C. FIRE INSURANCE - CONTENTS.

The necessary fire insurance coverage protecting his furnishings and trade fixtures.

D. FIRE INSURANCE - BUILDINGS.

The necessary fire insurance coverage on the building on its replacement value shall be purchased by the County.

RULE 12 - ASSUMPTION OF RISK

12.1 - Assumption of Risk.

The Concessionaire shall assume the risk of any loss, damage or theft of his property on the booth premises. The County, its officers, agents and employees shall not be responsible or liable for any loss of, or damage to, or theft of the aforesaid property while on the booth premises, regardless of how or the manner in which any loss, damage or theft is sustained.

RULE 13 - INDEMNIFICATION

13.1 - Indemnification.

The Concessionaire shall so conduct his activities as not to endanger any person lawfully thereon; and shall indemnify, save and hold harmless the County and all of its officers, agents and employees free and harmless from any and all deaths, injuries, losses and damages to persons or property, and any and all claims, demands, liabilities arising thereon occasioned, wholly or in part, by the acts or omissions of the Concessionaire, his agents, officers, employees, patrons, or any person admitted to the booth premises of the concession pursuant to the contract and in accordance with these Rules and Regulations.

RULE 14 - ASSIGNMENTS

14.1 - Assignments.

The Concessionaire shall not sublet the whole or any part of the booth premises, nor assign, hypothecate, or mortgage the contract, or any of its rights thereunder, except as specified hereinafter. The Concessionaire shall be permitted to sublet only part of the booth premises to other Charitable and Non-Profit Organizations on temporary use status. The Director of Finance may consent to assignment of the contract upon the Concessionaire justifying the need to assign the contract. Any consent by the Director of Finance shall not operate as a waiver of this condition for further subletting, assignment, hypothecating, or mortgage.

RULE 15 - ALTERATIONS OR IMPROVEMENTS

15.1 - Alterations or Improvements.

The Concessionaire shall not make alterations or repairs to the booth premises without obtaining the prior written consent of the Officer-in-Charge and approved by the Director of Finance.

RULE 16 - DESTRUCTION OF OR DAMAGE TO BOOTH PREMISES

16.1 - Destruction of or Damage to Booth Premises.

If the booth premises are destroyed or are damaged, either wholly or in part, by Act of God, war, fire or other catastrophe that the same cannot be repaired with reasonable diligence within three (3) months after such occurrence, and during said three (3) months period, the Concessionaire is unable to continue the operation of his concession, the Concessionaire may terminate the contract as of the date of such damage or destruction, and the Concessionaire shall pay rental only up to the time of such damage or destruction.

RULE 17 - RENTAL ADJUSTMENT

17.1 - Rental Adjustment.

In the event when construction work of the County, on, within, or contiguous to the concession booth premises causes a reduction in the gross income of 15% or more from what the Director of Finance estimates to be the reasonable gross income per month and such reduction exists for a period not less than sixty (60) consecutive days, the contract terms and rental may be modified in accordance with Section 102-10, HRS, as amended.

Rental adjustment shall be pro-rata to the reduced percentage of actual income:

$$\frac{\text{actual income during normal operation}}{\text{actual income during obstruction}} = \frac{\text{contract rate}}{x}$$

## RULE 18 - BREACH OF CONTRACT, BANKRUPTCY, INSOLVENCY

### 18.1 - Breach of Contract, Bankruptcy, Insolvency.

In the event the Concessionaire shall fail to pay the rent when the same becomes due, whether the same shall not have been legally demanded or does not provide the services required herein, or shall fail in any other respect to faithfully observe or perform and condition or covenant of the contract and such non-performance is not excused as provided herein; or if the Concessionaire shall become bankrupt or insolvent or shall make an assignment for the benefit of his creditors, or if the Concessionaire should file any debtor proceedings or take any proceedings of any kind or character whatsoever under any provisions of the Federal Bankruptcy Act seeking any readjustment, arrangement, postponement, composition or reduction of Concessionaire's debts, liabilities or obligations, or if any such proceedings under the Federal Bankruptcy Act shall be taken against the Concessionaire and the same shall not be frivolous, or the Concessionaire shall abandon the concession booth premises, or suffer the contract or interest thereunder to be taken under any writ of execution, then the County may at once enter into and upon the premises or any part thereof, and at its option terminate the contract and thereupon take possession of the booth premises and all improvements and equipment and thereby become wholly vested with all right, title and interest of the Concessionaire and of those claiming under him, all without service of notice or resort to any legal process and without being deemed guilty of any trespass or becoming liable for any loss or damage which may be occasioned thereby, and without prejudice to any other remedy or right of action which the County may have for arrears of rent or for other or preceding breach of covenant of the contract on the part of the Concessionaire.

## RULE 19 - SURRENDER OF PREMISES UPON TERMINATION

### 19.1 - Surrender of Premises Upon Termination.

Prior to or on the termination date of the contract, other than for breach thereof, the Concessionaire shall remove his merchandise, and equipment and shall peaceably surrender possession of the booth premises in good order, condition and repair, reasonable wear and tear excepted. All permanent fixtures shall be the property of the County. The Concessionaire may remove all equipment owned and installed by him, provided that he shall repair all damages caused by the removal of such equipment. All removal and repairs shall be made prior to or on the termination date of the contract.

## RULE 20 - ACCEPTANCE OF RENT

### 20.1 - Acceptance of Rent.

The acceptance of the rent or any sum reserved in the contract by the County shall not be deemed to be a waiver by the County of any breach of the Concessionaire of any covenant or condition contained in the contract.

## RULE 21 - LAWS TO BE OBSERVED

### 21.1 - Laws to be Observed.

The Concessionaire shall observe, perform and comply or require compliance with all governmental laws, ordinances, rules and regulations of the United States, the State of Hawaii, the County of Kauai, or any department or agency thereof, which in any manner affect the construction and installation of the concession facilities, and in the operation and maintenance of the concession. Any reference to such laws, ordinances, rules and regulations shall include any amendments thereto.

## RULE 22 - PERMITS AND LICENSES

### 22.1 - Permits and Licenses.

The Concessionaire shall procure and keep current all permits and license, pay promptly all charges and fees and give all notices necessary and incidental to the due and lawful operation of the concession.

## RULE 23 - COST OF ENFORCEMENT AND LITIGATION

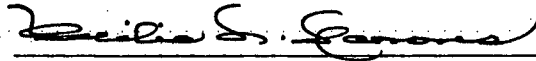
### 23.1 - Cost of Enforcement and Litigation.

In the event the County shall, without any fault, be made a party to any litigation, other than condemnation or like proceedings, commenced by or against the Concessionaire arising out of the Concessionaire's use or occupancy or the premises or attributable to any structure or objects placed thereupon or therein by the Concessionaire, then the Concessionaire shall pay all costs, and reasonable attorney's fees incurred by or imposed upon the County in connection with such litigation.

I, CECILIA N. RAMONES, in my capacity as Director of Finance of the County of Kauai do hereby certify:

1. That the foregoing is a full, true and correct copy of the Kauai County Finance Department Rules and Regulations relating to the Charitable and Non-profit Corporation vending stall at Spouting Horn Park which was adopted on December 18, 1986; and

2. That the notice to public hearing on the foregoing Rules and Regulations of the Kauai County Finance Department relating to Charitable and Non-profit Corporation vending stall at Spouting Horn Park, which notice included the substance of such Rules and Regulations was published in The Garden Island newspaper on November 26, 1986.



CECILIA N. RAMONES  
Director of Finance

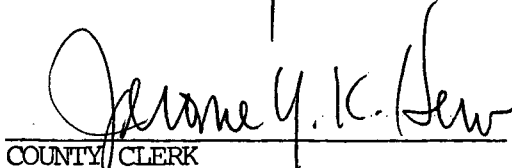
APPROVED AS TO FORM AND LEGALITY:

  
COUNTY ATTORNEY

APPROVED THIS 11th DAY OF  
February, 1987

  
TONY T. KUNIMURA  
MAYOR, COUNTY OF KAUAI

RECEIVED THIS 19th DAY OF  
February, 1987

  
COUNTY CLERK

and