

REQUEST FOR PROPOSALS
FOR
A DESIGN AND BUILD PROJECT
BALLROOM ROOF REPAIRS
FOR HAWAI'I CONVENTION CENTER

RFP 2023-18

HONOLULU, HAWAII

August 2023

Proposal Due Date: Tuesday, September 5, 2023

For Information, Contact:
Cumming Management Group, Inc.,
HCC's Construction Manager at atanton@cumming-group.com

TABLE OF CONTENTS

NOTICE TO OFFERORS	1
SECTION 1 - GENERAL INSTRUCTIONS TO OFFERORS	2
SECTION 2 – SCOPE OF WORK/SPECIFICATIONS	6
SECTION 3 – PROPOSAL SUBMITTAL REQUIREMENTS	18
SECTION 4 – EVALUATIONS	22
SECTION 5 – AWARD OF CONTRACT	24

APPENDICES

Appendix A:	Hawaii Convention Center Event Schedule Template
Appendix B:	AIA Document A141 – 2014 Standard Form of Agreement Between Owner and Design-Builder
Appendix C:	Exhibit A: AIA Document A141 – 2014, Appendix A: Design-Build Amendment Exhibit B: AIA Document A141 – 2014, Appendix B: Insurance and Bonds Exhibit C: General Conditions Exhibit D: Special Conditions
Appendix D:	Proposal Form and Rate Card
Appendix E:	HCC Health & Safety Procedures
Appendix F:	Agreement for Rental of Equipment (Without Operator)
Appendix G:	Project Documents 1. Hawaii Convention Center Architectural Plans, dated December 15, 1995 2. Hawaii Convention Center Structural Plans, dated December 15, 1995

NOTICE TO OFFERORS

AEG Management HCC, LLC a wholly owned subsidiary of ASM Global (“HCC”) is requesting proposals (“Proposals”) from qualified companies (“Offerors”) for a design and build project for (the “Ballroom Roof Repairs”).

Thank you for your interest in submitting a proposal for this solicitation. The purpose of this request for proposals is to identify and select the best qualified supplier/provider that will provide superior goods/services to meet the scope of services at competitive rates. The rationale for this request for proposals (“RFP”) is to promote and ensure the fairest, most efficient means to obtain the benefits of the most qualified responsive and responsible proposal. In order for HCC to evaluate your proposal in a timely manner, please follow the instructions presented in each section of this document.

It is the intent to award a Stipulated Sum Design Build contract during this procurement process as outlined below. The price shall include the cost of all labor, materials, supplies, equipment, job-related incidental work, and the securing of all required permits, notifications, and/or inspections that are required to specify (The “Ballroom Room Repairs”) as specified in the Scope of Work herein.

This RFP does not commit HCC to award a contract, nor to pay any costs incurred in the preparation and submission of Proposals in anticipation of a contract. HCC also reserves the right to unilaterally cancel this solicitation at any time without any liability.

Forms and information are available by contacting:

Project and Construction Manager for AEG / HCC (PM/CM) - Mr. Andrew Tanton
Cumming Management Group, Inc.
841 Bishop Street – Suite 725
Honolulu, Hawaii 96813
Email: atanton@cumming-group.com

And by copy to:

Contracting Officer – Ms. Mari Tait
AEG/Hawaii Convention Center
1801 Kalakaua Avenue
Honolulu, Hawaii 96815
Email: hccrfp@hccasm.com

Offerors should carefully read the entire RFP documents. Proposals must comply with all instructions herein provided and must be submitted with a completed and signed Proposal Form, a copy of which is provided hereto as Appendix D. Interested parties should register with the PM/CM (as defined in Section 1.2 below) with copy to the Contracting Officer by **Wednesday, August 9, 2023**.

Written questions regarding this RFP may be submitted via email to the PM/CM with copy to the Contracting Officer by **4:00 p.m. Hawaii Standard Time (“HST”) on Friday, August 25, 2023** at the addresses listed above.

SECTION 1 - GENERAL INSTRUCTIONS TO OFFERORS

1.1 DEADLINE FOR PROPOSALS

Proposals **MUST** be submitted via email to the PM/CM with copy to the Contracting Officer no later than **4:00 p.m. HST on Tuesday, September 5, 2023.**

Proper delivery of the proposal is the sole responsibility of the Offeror.

Pursuant to HRS § 201B, this RFP is subject to Part III of Chapter 103D of the Hawaii Public Procurement Code, Hawaii Revised Statutes. Accordingly, all proposals and Offerors must comply with all the requirements applicable to the formation of a contract pursuant to Part III of Chapter 103D of the Hawaii Public Procurement Code, Hawaii Revised Statutes.

1.2 CONTRACTING OFFICER & PROJECT AND CONSTRUCTION MANAGER

The Contracting Officer is responsible for administering/facilitating all requirements of the RFP solicitation process. The Contracting Officer will also be responsible for "contractual actions" throughout the term of the contract. The Contracting Officer is:

Contracting Officer -- Ms. Mari Tait
AEG/Hawai'i Convention Center
1801 Kalakaua Avenue
Honolulu, HI 96815
Email: hccrfp@hccasm.com

Assisting and providing guidance, oversight, procurement, construction, and project management services for HCC on the Project is HCC's Project and Construction Manager, Cumming Construction Management, Inc. ("PM/CM" or "Cumming"). Cumming shall be the primary point of contact on the project for procurement and work-related issues and will provide construction and project management services throughout the term of the contract. Cumming's project manager for the HCC is:

Project and Construction Manager for AEG / HCC – Mr. Andrew Tanton
Cumming Management Group, Inc.
841 Bishop Street – Suite 725
Honolulu, HI 96813
Email: atanton@cumming-group.com

1.3 AEG COMPANY OVERVIEW

ASM Global is the world's leading venue management and services company. The company was formed by the combination of AEG Facilities and SMG, global leaders in venue and event strategy and management. The company's elite venue network spans five continents, with a portfolio of more than 300 of the world's most prestigious arenas, stadiums, conventions, and exhibition centers, and performing arts venues. For more information, please visit www.asmglobal.com.

Facility Overview

The Hawaii Convention Center opened to the public in June 1998 and is used for a variety of events, including conventions, trade shows, public shows, meetings, and sporting events. The Hawaii Convention Center offers approximately 350,000 square feet of rentable space, including 51 meeting rooms.

AEG Management HCC, LLC, a part of the ASM Global collection of companies, is the manager of the HCC pursuant to a Contract for Professional Services effective as of January 1, 2014, as may have been amended, with the Hawai'i Tourism Authority ("HTA"), a duly organized authority of the State of Hawai'i (the "State").

For more information on HCC, please visit <https://www.meethawaii.com/convention-center/>

1.4 PROCUREMENT TIMETABLE and SIGNIFICANT DEADLINES

The Timetable and Significant Deadlines set out herein; represents HCC's best estimate of the schedule to be followed in the RFP process. If an activity of the timetable (i.e., Proposal Due Date for Receipt of Proposals) is delayed, the rest of the timetable deadlines may be shifted by the same number of days. HCC will advise Offerors by issuing an addendum to the RFP of any changes to the proposed timetable.

<u>Activity</u>	<u>Scheduled Date</u>
RFP Announcement	Sunday, August 6, 2023
RFP Issue	Monday, August 7, 2023
Register by	Wednesday, August 9, 2023
Pre-Proposal Conference (mandatory)	Wednesday, August 16, 2023
Second Pre-Proposal Conference (non-mandatory)	Friday, August 18, 2023
Closing Date for Receipt of Questions	Friday, August 25, 2023
HCC's Response to Offeror's Questions	Friday, September 1, 2023
Proposal Due Date	Tuesday, September 5, 2023
Best and Final Offers (optional)	Monday, September 11, 2023
Design-Builder Selection/Award of Contract (tentative)	September 2023

1.5 PRE-PROPOSAL CONFERENCE

A mandatory pre-proposal conference will be held on **Wednesday, August 16, 2023** from **10:00 a.m. HST** at the Hawaii Convention Center. The time and date of the mandatory pre-proposal conference is subject to change. The purpose of the conference is to review HCC's requirements; answer questions pertaining to the RFP; and, provide additional information that may assist in the preparation of proposals. Additionally, floor plans, if necessary, of the Hawaii Convention Center will be provided during the conference as well as an escorted "familiarization tour" of the Hawaii Convention Center for interested Offerors.

Pre-Proposal Conference proceedings will not be formally documented unless changes in the RFP are required. RFP changes will be implemented by issuing an Addendum (to the RFP). Addenda will be provided to all Offerors registered to receive the RFP. The proceedings, at HCC's option, may be audio and/or videotaped by HCC. Attendees cannot audio and/or videotape the proceeding.

Offerors interested in attending the conference should contact the PM/CM. Attendees are to check-in at the HCC Lobby, street level of HCC and await further direction. Costs relating to attendance at the Pre-Proposal Conference/Site Visit shall be the responsibility of the attendee and shall not be reimbursed by HCC.

The conference shall be cancelled at the election of HCC if no or little interest in conference participation is received.

1.6 SUBMISSION OF QUESTIONS

Offerors are encouraged to submit written questions pertaining to the RFP. Impromptu (unwritten questions) are permitted and verbal answers will be provided at the preproposal conference and other occasions but are only intended as general direction and will not represent official HCC position.

Questions must be submitted in writing via email to PM/CM, with a copy to the Contracting Officer by 4:00 p.m. HST on Friday, August 25, 2023. All written questions will receive an official written response from HCC and become addendums to the RFP. The only official position of HCC is that which is stated in writing and issued in the RFP as addenda thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement, and may not be relied upon.

1.7 SOLICITATION REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Contracting Officer no later than **4:00 p.m. HST on Friday, August 25, 2023**. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package. Offerors may not raise any issues with the contents of the RFP after Proposals have been submitted.

1.8 RFP AMENDMENTS and ADDENDA

HCC reserves the right to amend the RFP any time prior to the ending date for proposal review/evaluation period. Such changes shall come in the form of amendments or Addenda.

1.9 CANCELLATION OF RFP

The RFP may be unilaterally canceled by HCC at any time if such cancellation is determined by HCC in its sole discretion to be in the best interests of HCC.

1.10 CONDITIONS AND LIMITATIONS

The proposal and any information made a part of the proposal will become part of HCC's official files without obligation on HCC's part to return them to the original Offerors.

This RFP and the selected Offeror's response will, by reference, become part of the formal Contract between HCC and the selected Offeror resulting from this solicitation.

Offerors shall not offer any gratuities, favors, or anything of monetary value to any official or employee of HCC or the State for the purpose of influencing consideration of a proposal.

1.11 RULES OF CONTACT AND COMMUNICATIONS

Offerors may not contact HCC officials, employees, or representatives (including the PM/CM) concerning this RFP while the solicitation process is in progress, except as expressly required or permitted by these General Instructions, the RFP Documents, or other instruction from HCC or its PM/CM. The solicitation process begins when the RFP is issued and will be completed with the award of the Contract. Any contact determined to be improper, at the sole discretion of HCC, may result in disqualification.

SECTION 2 – SCOPE OF WORK/SPECIFICATIONS

2.1 INTRODUCTION

HCC is seeking proposals to address all required repairs to the ballroom roof. Repairs to include but are not limited to a complete replacement of the existing standing seam metal roof or coating the existing standing seam metal roof to make watertight.

2.2 PROJECT BACKGROUND

The standing seam roof over the Honolulu Convention Center's Kalakaua Ballroom on the Fourth-Floor dates to the original construction of the structure in 1995. There are currently (3) three known active leaks. Proposers will provide feedback on condition assessments performed from the mandatory pre-proposal conference and include in its proposal package.

2.3 OVERVIEW OF SCOPE

2.3.1 Due to the project being a design-build, HCC will not limit the proposers to the following two options. However, for guidance and direction, HCC is currently considering the following two options below. Upon receipt of alternate recommendations, HCC will release an addendum to all interested proposers.

2.3.2 **Option 1: Complete Replacement of the Existing Standing Seam Metal Roof**

- a. Replace existing standing seam metal roof and replace in-kind.
- b. Remove, refinish, and install existing gutter system(s).
- c. Excludes new roof deck system (existing system to remain).

2.3.3 **Option 2: Coat Existing Standing Seam Metal Roof**

- a. Coat all existing standing seam metal roof surfaces.
- b. Spot treat and address all areas with sign of rusting.
- c. Work to exclude all existing gutter system work.

2.4 SCOPE OF WORK

This is a turn-key project. All aspects of design & build, project management, supervision, procurement of materials and equipment, labor, all job-related incidental work, and the securing of all required permits, notifications, and/or inspections, including fees for such permits, notifications, and/or inspections, shall be the sole responsibility of the Design-Builder.

The Design-Builder shall provide all engineering and design services necessary for the execution of this project. Design-Builder shall, during the pre-proposal job walk, inspect the work site, and identify existing conditions that may affect the execution of this scope of work.

2.4.1 Design-Builder will provide the following equipment & personnel:

- a. An On-Site lead person who will be present during the entire project to coordinate with work crews and to report to Cumming & HCC Engineering Management.
- b. All necessary equipment, ladders, tools, products, and materials to complete services.
- c. Clean up of work area and removal of all debris at end of each working day and completion of project.

2.4.2 All PPE and safety equipment required to complete services.

2.4.3 Certifications

- a. Copies of certifications for staff that may be utilizing equipment requiring specialized certifications per Federal Occupational Safety and Health (OSHA) and Hawaii Occupational Safety and Health (HIOSH) regulations.

2.4.4 Preconstruction and Replacement Plan

- a. Provide all Pre-Construction Services as required to perform on-site investigations to inform the design, confirm constructability approach, planning and logistics of the project.
- b. Provide and present to HCC a Replacement Plan, which includes but is not limited to replacement concepts, laydown plan, logistic plan, including material and waste handling, and construction phasing schedule.
- c. Provide a construction phasing plan that properly plans the interior and exterior limits of work, to ensure coordination, and to expedite the work.
- d. Upon HCC approval of Replacement Plan prepare, submit, and expedite Construction Documents for Building Permit Approval.
- e. Provide and coordinate all Construction Phasing to minimize HCC's operation impacts and shutdowns periods. Notify and coordinate with HCC all shutdown periods and make-safe all utility shutdowns as required for HCC's approval.
- f. Provide Construction Phasing to ensure that the interior and exterior scope of work is coordinated for concurrent constructability.

2.4.5 Scope of Work Detail – General

2.4.5.1 Option 1

- a. Remove existing standing seam metal roof and dispose entirely.
- b. Remove, refinish, and re-install existing gutter system(s).
- c. Provide protection to existing structure while work is in progress.
- d. The building shall always remain watertight.
- e. Inspect for damage to existing roof deck system and execute necessary repairs to existing roof deck system.
- f. Replace standing seam metal roof in-kind.
- g. Excludes new roof deck system (existing system to remain).

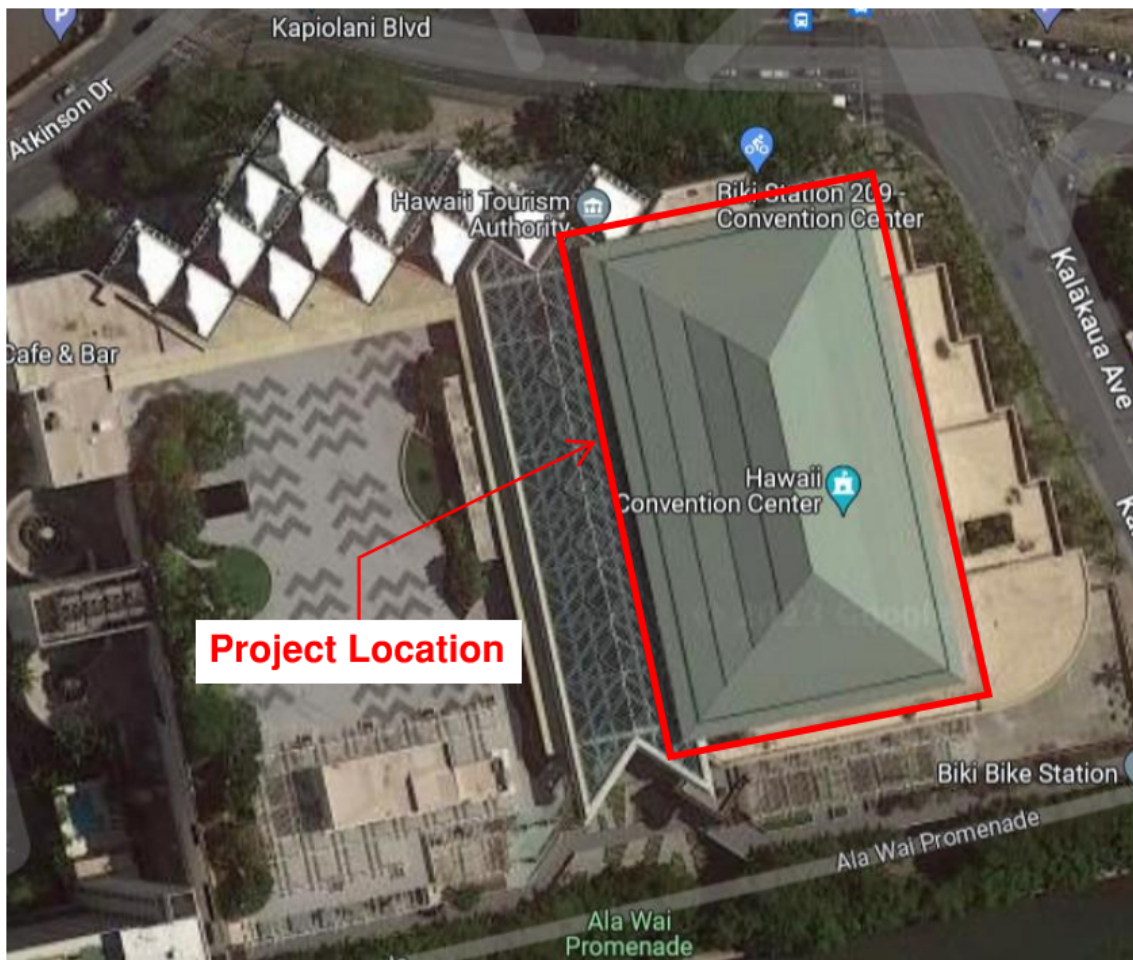
2.4.5.2 Option 2

- a. Spot treat all existing rust-damaged areas to standing seam metal roof.
- b. Provide protective coating to entire existing standing seam metal roof.
- c. Excludes all existing gutter work.

2.4.6 Project Locations

Site Vicinity Map

Not to Scale



2.5 GENERAL REQUIREMENTS

- A. Drawings and general provisions of Contract.
- B. The Design-Builder shall be responsible for providing the exact function described herein and will be held to the operational criteria. All Offerors must include in his or her response to this Specification any design limitations or constraints in the performance of its system as proposal.
- C. All exceptions to these Specifications and drawings must be made with the proposal submission. In the absence of exceptions, these Specifications and drawings shall be binding on the successful Offerors. Further, in the absence of exceptions, the Design-Builder is stating that the design and specifications for the system have been examined in detail and the Design-Builder is prepared to take full responsibility for the performance of the complete installation as specified.
- D. All work shall be scheduled and performed in a manner that will not have a negative impact on events in the facility. Negative impacts include, but are not limited to, noise, odors, dust, vibration, visual impacts, power outages or disruptions, and intrusion of personnel or equipment. Access to certain spaces will not be allowed if such access causes a negative impact on event related operations. As such, work may need to be scheduled around the events in progress. Design-Builder may work days, evenings, and/or weekends to schedule the work around event operations, and no overtime will be allowed, offeror shall provide an initial schedule / timeline from pre-con to post con and close out with the proposal.
- E. Dust control – The Design-Builder must prevent dust from becoming airborne at all times, including non-working hours, weekends, and holidays in conformance with State Department of Health, administrative rules title 11, chapter 60.1 – Air pollution control. The Design-Builder is responsible for and shall determine the method of dust control, subject to the Design-Builder's choice. The use of water or environmentally friendly chemicals may be used over surfaces that contain dust.
- F. Noise control – The Design-Builder must keep noise within acceptable levels at all times in conformance with State Department of Health administration rules title 11-chapter 46 community noise control. The Design-Builder must obtain and pay for a community noise permit when construction equipment or other devices emit noise at levels exceeding the allowable limits.
- G. Water control – The structure is to remain watertight all times. At no time is the building structure to be exposed to wet conditions. Ensuring the structure remain watertight will be the sole responsibility of the Design-Builder and its subcontractors.

- H. Water Mitigation – During the removal of the existing gutters, the Design-Builder must ensure that any water is mitigated from the top roof to the respected drain lines. Water mitigation will be the sole responsibility of the Design-Builder and its subcontractors.
- I. Care should be exercised when performing work in the facility. Any damage to building structure, systems, equipment, and/or furnishings caused by the Design-Builder and its subcontractors shall be repaired and/or remedied to the satisfaction of HCC representative by the Design-Builder without any cost or impact to HCC and/or the project schedule.
- J. Work site shall be maintained in broom-clean condition at the end of each shift. All construction debris, old equipment and/or parts awaiting disposal, and/or tools and equipment shall be stowed in a manner so as not to pose a safety hazard to employees and the public; and as to not impact HCC event activity.
- K. Design-Builder shall be responsible for any demolition work that might be necessary to accomplish the work.
- L. Design-Builder shall properly recycle and dispose of the construction demolition materials. The quantity/weight of all recycled materials shall be tracked and submitted to HCC and the City representative monthly and a complete summary at the end of the project.
- M. Final job walk shall be conducted with Cumming and HCC representative and punch list items, if any, shall be completed and all closed out documents received before final payment is made.
- N. Along with the proposals, the Design-Builder shall submit a Project Outline & schedule that includes, but is not limited to, project milestones (design work, major project tasks, testing/commissioning), along with estimated duration time frames for those milestones, and total project duration for the work required to complete this project.
- O. The Design-Builder shall be responsible for providing the exact function described herein and will be held to the operational criteria.

2.6.1 Principal Work in This Section

- A. The work includes the supply and installation of all components, specified or not, for Ballroom Roof Repairs, to be placed back in service.
- B. The Work also includes, all work as defined in the Overview of Scope above, and includes but is not limited to:
 - Upon Contractor's investigation, due diligence, and identification of existing reusable parts, provide design-build concepts.

- Provide construction services to provide a complete turn-key project to replace the existing standing seam roof.
- Address all remedial work if applicable.
- Provide all temporary utilities as required to continuously support and maintain all existing utilities during the execution of the work.
- Provide complete O&M Manuals.
- Licensing & certificate's & permits as applicable.
- Client training for HCC staff, with Video records as applicable.
- Client maintenance training.

2.6.2 Quality Assurance

- A. All equipment provided by Contractor should meet specifications listed herein.
- B. Contractor shall obtain instructions & training for installation from manufacturer of each product

2.6.3 Submittal

A. General

- Do not commence work that requires review of any submittals until receipt of returned submittals with appropriate final action.
- Do not submit substitute items that have not been approved.
- Do not include requests for substitution (either direct or indirect) on submittals.
- Submittals which deviate from the procedures outlined herein will be rejected in total without review. No allowance or extension of project time will be considered due to lost time associated with procedural deviation.

B. Coordination of Submittals

- Coordinate preparation and processing of submittals with performance of the work. Coordinate each separate submittal with other submittals and related activities that require sequential performance.
- Coordinate the submittal of different units of interrelated work so that no submittal will be delayed by the Construction Manager's/Project Manager's, and HCC's review of a related submittal.

C. Pre-Construction

- Provide field investigation of all existing conditions.
- Incorporate and coordinate field investigations with CM/PM/HCC to properly inform the repair plan and constructability of the project.
- Report findings and recommendations based on field investigations and surveys.
- Product cut sheets for all products and materials.
- Recommended application and installation methods.

- Complete shop drawings of all work as required by the technical specifications.
- Elevations and detailing plans.
- Operating instructions.

D. Post Construction

- Record Documents including As-Built Documents.
- All preconstruction shop drawings updated to as-build condition.
- Product cut sheets for all equipment used.
- Operating manuals.
- Warranty information, for all materials should be provided with duration of warranty period stated.

2.7 APPROVALS

2.7.1 Obtain all necessary approvals and permits from local authorities for all materials to be supplied, methods of installation and system operations, as required herein and by local authorities, it is noted that the owner will pay for all permit fees, but Design-Builder is required to process permit applications.

2.7.2 The entire installation, including materials and equipment shall meet or exceed the minimum standards and requirements of the following:

- A. All applicable codes and editions as identified by the Architect/Engineer of Record on the approved City and County of Honolulu, Department of Planning and Permitting (DPP), Building Permit Set.
- B. Underwriters' Laboratories, Inc. listing service.
- C. NFPA 72 and National Fire Codes.
- D. NSPC – National standard plumbing code.
- E. Codes as accepted and/or modified by the local Authorities:
 - 1. National Electrical Code.
 - 2. American Disabilities Act (ADA).
 - 3. Underwriters' laboratories, UL 1971 for Hearing Impaired

2.8 EXECUTION SCOPE OF WORK

2.8.1 Installation

- A. Design-Builder shall execute the work in accordance with the approved Contract Documents, including the Drawings and Technical Specifications and in compliance with all the Standards listed therein.

- B. Design-Builder must schedule work according to available dates outlined in HCC Event Schedule in Appendix A. Upon award, Appendix A to be updated and provided.
- C. Coordinate the review and approval of all outstanding Punchlist Items with design professional and the HCC.

2.8.2 Demonstration and Training

- A. In-house maintenance. Provide competent, factory authorized personnel to instruct and train HCC maintenance personnel concerning the location, operation and troubleshooting of the installed systems. The instruction shall be scheduled in coordination with HCC's Representative after submission and approval of formal training plans.
- B. Also provide cost for annual maintenance by manufacturer if required by the warranty.
- C. Vendor shall supply two (2) printed sets and two (2) electronic copies of an Operations Manual & plans for the system.

2.8.3 Certification

- A. Design-Builder shall include a letter of certification from the manufacturer with its submittal.

2.8.4 Testing

- A. After work is completed, and prior to requesting the Acceptance Test, Design-Builder shall conduct a final inspection and pre-test all equipment and system features. Design-Builder shall correct any deficiencies discovered as the result of the inspection and pre-test.
- B. Design-Builder shall submit a request for the Acceptance Test in writing to HCC via email to the PM/CM, with a copy to the Contracting Officer.
 - 1. This request shall be submitted to HCC no less than 7 days prior to the requested test date.
 - 2. The request for Acceptance Test shall constitute a certification from Design-Builder that all work is complete and in compliance with the Contract Documents, Manufacturer installation specifications, that all systems have been tested, and all corrections have been made.
 - 3. Acceptance Test shall be scheduled based on HCC's availability.
 - 4. Design-Builder shall provide the services of no fewer than 2 technicians to perform the Acceptance Test.

- a. Technicians performing the Acceptance Test shall have been involved in the installation of this project and shall be thoroughly familiar with all aspects of the work.
 - b. Technicians shall be equipped with portable two-way radios or cell phones for use during the test.
- 5. Design-Builder shall provide all ladders, tools, test equipment, and other facilities needed to accomplish the Acceptance Test.
- 6. During Acceptance Test, Design-Builder shall demonstrate all equipment and system features to HCC.
 - a. Design-Builder shall fully cooperate with the HCC and provide assistance with the inspection and test.

2.9 WAGE RATES AND OTHER FEES

- 2.9.1 Design-Builder shall pay prevailing wage rates as required by Hawaii State law for all personnel working on State Public Works Projects and who perform work on this project. Fully loaded rates will include all wages, benefits, and other overhead loadings.
- 2.9.2 Design-Builder shall provide information on mark-up percentages on parts and materials, subcontracts, etc. as required by this RFP or if requested.
- 2.9.3 Design-Builder shall include all taxes and fees in the pricing proposal.

2.10 INSURANCE

The successful Offeror shall be required to obtain and maintain in force at all times during the term of the agreement insurance coverage as provided in the anticipated Contract document, which is provided as Exhibit B to Appendix C. The successful Offeror shall be solely responsible for the cost of insurance. Such coverage shall be obtained from an insurance company licensed and authorized to do business in the State of Hawaii. Evidence of coverage shall be provided to HCC before any contract for this project is executed.

2.11 BONDING

The successful Offeror shall be required to obtain and maintain in force at all times during the term of the project performance and payment bonds as provided in the anticipated Contract, which is provided as Exhibit B to Appendix C. The successful Offeror shall be solely responsible for the cost of bonds. The bonds shall be obtained from an approved bonding company that is licensed and authorized to do business in the State of Hawaii. Evidence of both the performance and payment bonds shall be provided to HCC before any contract for this project is executed.

2.12 MISCELLANEOUS REQUIREMENTS

- 2.12.1 Design-Builder shall keep and maintain all of its work areas at the Project site in a neat and orderly fashion and free from obstacles and debris. Design-Builder shall be responsible for removing all debris from the property.
- 2.12.2 Design-Builder shall comply with all federal, state, and local laws, regulations, and ordinances, including occupational safety and health standards applicable to the performance of the service specified.
- 2.12.3 Design-Builder shall be afforded reasonable access to all necessary systems, equipment and areas when required to perform the services specified, subject to reasonable security restrictions as directed by HCC or its PM/CM. Design-Builder shall not be responsible for any equipment malfunction, injuries, or damages of any nature due to an unreasonable prevention or denial of access to perform services.
- 2.12.4 Design-Builder shall pass on to HCC the benefit of any warranties or guarantees of all manufacturers, suppliers and subcontractor providing labor and/or materials in connection with the services.
- 2.12.5 Design-Builder shall maintain competent and sufficient staff assigned to the Project to perform the services specified. All Design-Builder employees assigned to the Project shall maintain a neat and professional appearance at all times while performing the services. If possible, Design-Builder's employees shall wear properly identified company uniforms at all times consisting of shirts with sleeves, long pants, and appropriate shoes. Design-Builder's employees shall be fully and properly clothed at all times while performing the duties set forth.
- 2.12.6 Design-Builder shall cooperate with HCC in obtaining and maintaining appropriate and necessary security clearances, if needed, for its employees in connection with the performance of the services.
- 2.12.7 The Design-Builder is not permitted to store materials and/or equipment on HCC's property during non-working days. The Design-Builder will be required to have their own workplace not located on HCC's property. Upon award, HCC may grant the Design-Builder with a workplace. The Design-Builder shall be solely responsible for the satisfactory completion and quality of all work performed as determined by HCC.
- 2.12.8 ALL work, services, or products developed must comply with ALL applicable City and County, State, and Federal rules, regulations, codes, and guidelines.
- 2.12.9 HCC shall hold the Design-Builder liable for all the acts of its employees.
- 2.12.10 Design-Builder shall ensure compliance with the "Hawaii Convention Center – Health & Safety Procedures" provided as Appendix E.
- 2.12.11 Design-Builder agrees to remove any of its employees from the premises upon written request by HCC.

- 2.12.12 Once the contract is awarded, the Design-Builder shall communicate directly with HCC's PM/CM regarding to performing the Scope of Work, and Design-Builder shall cooperate fully with the PM/CM in every way.
- 2.12.13 Should a disagreement arise between the Design-Builder and HCC or the PM/CM in regard to work performance of specific service requirements within the contract specifications, the directives of HCC and the PM/CM shall prevail. Design-Builder's failure to comply with HCC's or the PM/CM's directives shall be deemed cause for corrective action and subject to contractual remedies.
- 2.12.14 Should the Design-Builder discover any discrepancy in the specifications, the Design-Builder shall immediately notify the PM/CM before proceeding any further with the work, otherwise, the Design-Builder will be held responsible for any cost involved in correction of work placed due to such discrepancy.
- 2.12.15 If any work is not in full compliance with these Specifications, the Design-Builder shall make all necessary corrections to the full satisfaction of HCC and/or the PM/CM and at no additional cost to HCC. The Design-Builder shall perform corrective work within the period allowed by the Contract Documents or the PM/CM.
- 2.12.16 The Design-Builder shall immediately remedy any defects caused by negligence of the Design-Builder or its employees. The Design-Builder shall exercise care and shall provide all necessary protection to prevent injury and/or damage.
- 2.12.17 The Design-Builder shall be required to protect the occupants and the general public from any unsafe conditions during the performance of services and/or as a result of the services.
- 2.12.18 The Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes, effective May 16, 1972, as amended, is applicable and made a part of this solicitation by reference. The Design-Builder shall carefully read and strictly comply with its requirements.
- 2.12.19 All employees will be required to carry a Design-Builder issued, picture ID which will be required to be worn at all times while working at the Hawaii Convention Center. Design-Builder is to provide each employee with a plastic sleeve with clip to hold the ID.

2.13 MANDATORY CLEARANCES

All Design-Builder's employees providing service on this Project shall pass drug tests and security background checks completed before they are allowed to work on the property.

2.14 INSPECTIONS

HCC and/or its PM/CM shall be allowed to monitor the Design-Builder's job performance at any time. HCC and/or its PM/CM may require the Design-Builder to accompany its designated representative in conducting evaluations.

2.15 REMOVAL OF EMPLOYEES

HCC reserves the right to ask the Design-Builder to remove and replace any employee who conducts himself or herself in a manner detrimental to the operation of the Hawaii Convention Center. Such conduct would include, but is not limited to, inappropriate behavior toward clients or staff of HCC, consuming alcoholic beverages on the premises, and unauthorized or illegal activity.

2.16 FORM OF CONTRACT and PRECEDENCE OF DOCUMENTS

A sample form of the Contract for this project is provided as Appendix B. The order of precedence for the Contract Documents shall be as follows: (1) Contract, (2) Contract Appendix A: Design-Build Amendment and Appendix B: Insurance and Bonds, (3) Special Conditions, (4) General Conditions, (4) this RFP, including all addenda, attachments, appendices, and amendments, and (5) the Design-Builder's Proposal, including the BAFO if required and/or submitted.

2.17 GENERAL TERMS AND CONDITIONS

At all times, the Design-Builder shall comply with the General Terms and Conditions provided herein as Exhibit C to Appendix C.

2.18 SPECIAL CONDITIONS

At all times, the Design-Builder shall comply with the Special Conditions provided herein as Exhibit D to Appendix C. Note that the Special Conditions amend, replace, and add to the terms within the Contract and the General Conditions.

2.19 HCC HEALTH AND SAFETY PROCEDURES

The Design-Builder is responsible for providing adequate orientation, supervision and training of all employees working at the Hawaii Convention Center. All Design-Builder's employees must be familiar with the layout of the Hawaii Convention Center and comply with Appendix E – Hawaii Convention Center Health and Safety Procedures.

Please reference HCC's Health & Safety Protocols and Guidelines for the latest COVID-19 updates and requirements for entry, <https://blog.hawaiiconvention.com/reopening-protocols-and-guidelines/>

2.20 RENTAL EQUIPMENT

HCC rents certain equipment that its Design-Builder may utilize in the Design-Builder's services. In such instances, the Agreement for Rental of Equipment (Without Operator) form, provided herein as Appendix F, will be utilized.

SECTION 3 – PROPOSAL SUBMITTAL REQUIREMENTS

3.1 INTRODUCTION

One of the objectives of the RFP is to make proposal preparation easy and efficient, while giving Offerors ample opportunity to highlight their proposal. When an Offeror submits a proposal, it shall be considered a complete plan for accomplishing the requirements described in this RFP.

3.2 PROPOSAL PREPARATION

Each Proposal must include a completed Rate Card found in Appendix D (the "Proposal Form and Rate Card"). Offerors shall submit all data and information specified/requested in this SECTION to qualify its proposal for evaluation and consideration for award. Non-compliance may be deemed sufficient cause for disqualification of the Proposal.

3.3 DISQUALIFICATION OF PROPOSALS

HCC reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in the RFP and which demonstrate an understanding of the scope of services. **Any proposal offering any other set of terms and conditions contradictory to those included in the RFP may be disqualified without further notice.** HCC reserves the right to ask for clarification of any item in the proposal.

An Offeror will be disqualified, and the proposal automatically rejected for anyone or more of the following reasons:

Proof of collusion among Offerors, in which case all proposals involved in the collusive action will be rejected.

The Offeror's lack of responsibility and cooperation as shown by past work or services.

The proposal shows any noncompliance with applicable law.

The proposal is conditional, incomplete, or irregular in such a way as to make the proposal incomplete, indefinite, or ambiguous as to its meaning.

The proposal has any provision reserving the right to accept or reject award, or to enter into a contract pursuant to an award, or provisions contrary to those required in the solicitation.

3.4 SUBMISSION OF PROPOSALS

Each Offeror may submit only one (1) written proposal, addressed to the Contracting Officer via email to the PM/CM with copy to the Contracting Officer no later than **4:00 p.m. HST on Tuesday, September 5, 2023**, the "Proposal Due Date", identified in paragraph 1.4 of SECTION 1. **Proposals received after this time/date may be rejected.**

3.5 PUBLIC INSPECTION

Proposals shall not be opened publicly but shall be opened in the presence of two or more HCC officials. The register of proposals and Offeror's proposals shall only be provided to the public pursuant to a valid request made pursuant to the Hawaii Uniform Information Practices Act, chapter 92F of the Hawaii Revised Statutes ("UIPA") to the Hawaii Tourism Authority. Such requests can only be made after an awarded contract has been executed by HCC and the selected Offeror.

Offerors shall request in writing nondisclosure of designated trade secrets or other proprietary data to be confidential. Such data shall accompany the proposal and shall be readily separable from the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. HCC cannot guarantee that designated data will be kept confidential. The proposals are subject to disclosure rules set forth in the UIPA and as indicated above. The Offeror bears the burden of establishing that the designated data is exempted from the disclosure requirements set forth in the UIPA.

All proposals and other material submitted by Offerors become the property of HCC and may be returned only at HCC's option.

3.6 BALLROOM ROOF REPAIRS PROJECT PROPOSAL

The Ballroom Roof Repairs proposal shall include the following categories:

COVER LETTER

SUMMARY OF PROPOSAL

BACKGROUND, QUALIFICATIONS AND EXPERIENCE

PERSONNEL ORGANIZATION AND STAFFING

LIST OF SUBCONTRACTORS AND SUPPLIERS

EQUIPMENT AND INSTALLATION PLAN

IMPLEMENTATION AND TRAINING PLAN

PRICE SUBMITTAL FORM – RATE CARD

OFFEROR'S CERTIFICATE OF VENDOR COMPLIANCE via Hawai'i Compliance Express (<http://endors.ehawaii.gov>)

3.6.1 PROPOSAL COVER LETTER

The proposal cover letter must be on the Offeror's official business letterhead; signed by an individual authorized to legally bind the Offeror. If the Offeror is a corporation, the cover letter must be signed by an authorized officer of the corporation. Authorized representatives must show proof of their authority to bind the Offeror.

3.6.2 SUMMARY OF PROPOSAL

Clearly, concisely and briefly summarize and highlight the contents of the proposal in such a way to provide HCC with a broad understanding and aspects of the proposal.

3.6.3 BACKGROUND, QUALIFICATIONS AND EXPERIENCE

Provide explicit details on Design-Builder's background, qualifications and experience relative to performing requirements set forth in the "Scope of Services", including but not limited to:

- A. Background of the Design-Builder, i.e. services offered, size, resources, years in business, location, State of Hawaii presence, State of incorporation, etc.
- B. Brief description of Design-Builder's qualifications to perform "Scope of Services" requirements.
- C. List relevant similar installations undertaken within the past five (5) years, indicating at a minimum: manager, manager's representative, project name, and type of operations and equipment installed.
- D. Describe your safety record over the past five (5) years.
- E. A reference from a financial institution (name, title and telephone number).
- F. Three (3) references who can be contacted and provide name, title, organization, phone number, e-mail address.

3.6.4 PERSONNEL ORGANIZATION AND STAFFING

Provide explicit details on the Design-Builder's personnel organization and staffing relative to performing requirements set forth in the "Scope of Services", including but not limited to:

- A. Design-Builder's Managerial organizational chart and resumes of key positions and their respective role for this project if any.
- B. List key personnel who will be assigned to this project and indicate their role and their operations and maintenance experience for the past five (5) years.

3.6.5 LIST OF SUBCONTRACTOR AND SUPPLIERS

Offeror must submit a list of all subcontractor and suppliers that it will utilize for the project. For each subcontractor list, Offeror must indicate the scope of work to be performed by the listed subcontractor and whether a license is needed for the work. If a license is required, the Offeror must indicate that the subcontractor possesses the requisite license and is in good standing. For each supplier of key equipment, the Offeror must provide the name and address for the supplier and the equipment the supplier is providing for the project.

3.6.6 EQUIPMENT AND INSTALLATION PLAN

Offeror must submit a proposed Equipment List and Installation Plan for the Hawaii Convention Center which includes, at a minimum, a comprehensive description of the plan which will be utilized to comply with the Scope of Services required by the RFP.

3.6.7 COST PROPOSAL

Offeror must prepare and submit an all-inclusive cost proposal for the proposed equipment, the installation of the equipment and completion of the Scope of Work required by the RFP. A summary of all costs shall be in a form, referenced in Appendix D.

3.6.8 OFFEROR'S COVC

Provide a current Certificate of Vendor Compliance via Hawai'i Compliance Express (<http://vendors.ehawaii.gov>) issued by the State of Hawai'i.

3.7 DESIGN-BUILDER'S LICENSE

If a Hawai'i Contractor's license or any other license is required by law for the performance of the work which is called for in this RFP, the Offeror and all subcontractors MUST have the required license, and the license shall be in good standing, before commencement of work on this contract.

3.8 CERTIFICATION OF INDEPENDENT COST DETERMINATION

By submission of a proposal in response to this RFP, the Offeror certifies as follows:

- F. The costs in this RFP have been arrived at independently, without consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such costs with any other Offeror.
- G. Unless otherwise required by law, the costs which have been quoted in this RFP have not been knowingly disclosed by the Offeror prior to award, directly or indirectly, to any other Offeror or competitor prior to the award of the contract.
- H. No other attempt has been made or will be made by the Offeror to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.

3.9 MODIFICATION OR WITHDRAWAL OF PROPOSALS

A modification of a proposal already received will be accepted by HCC only if the modification is received prior to the proposal due date. All modifications shall be made in writing and executed and submitted in the same form and manner as the original proposal.

An Offeror may withdraw a proposal already received prior to the due date by submitting to HCC a written request for withdrawal executed by the Offeror's authorized representative. The withdrawal of a proposal does not prejudice the right of an Offeror to submit another proposal within the time set for receipt of proposals.

SECTION 4 – EVALUATIONS

4.1 INTRODUCTION

Evaluation of proposals will be conducted comprehensively, fairly, and impartially. A quantitative scoring system will be utilized to maximize the objectivity of the evaluation.

4.2 PROPOSAL EVALUATION COMMITTEE

An evaluation committee will be selected by HCC to perform all evaluation requirements. The committee will be composed of individuals with knowledge of the requirements identified in the RFP. HCC reserves the right to request information (from Offerors) to clarify Offeror's proposal.

4.3 EVALUATION PHASES

Evaluation phases will be conducted as follows:

Phase 1 Initial Proposal Evaluation
Phase 2 Establishment of Priority-List of Offerors **(optional)**
Phase 3 Discussions with Offerors/Presentations **(optional)**
Phase 4 Best and Final Offers **(optional)**
Phase 5 BAFO Evaluation, if necessary
Phase 6 Recommendation for Contract Award

4.3.1 INITIAL PROPOSAL EVALUATION

HCC and the PM/CM shall conduct an initial review of Offeror's proposal. The review will determine if Offeror adequately addressed the "Scope of Services" requirements, and if the proposal contains all the requirements of this RFP. The initial review will also determine if discussions with the Offerors is necessary. Evaluation of the proposals will be conducted using the evaluation criteria and weight percentages in paragraph 4.4 and, the scoring system in paragraph 4.5.

4.3.2 ESTABLISHMENT OF PRIORITY-LIST OF OFFERORS **(optional)**

The evaluation committee shall rank order Offerors by evaluating and scoring the proposals using the value weight percentages and the evaluation criteria and scoring system in paragraphs 4.4 and 4.5. A priority-list of acceptable Offerors shall be established and limited to no more than the three (3) Offerors, who received the highest scores for their proposals.

4.3.3 DISCUSSIONS WITH OFFERORS **(optional)**

HCC and the PM/CM may require presentations and/or conduct discussions with Offerors regarding the Offeror's proposals. Offeror's proposal may be accepted without discussions.

4.3.4 BEST AND FINAL OFFERS (optional)

Offerors may be requested to submit a "Best and Final" offer ("BAFO"). The BAFO's shall be evaluated and Offeror's proposal "ranking" adjusted, accordingly. If a BAFO offer is requested but not submitted, the previous submittal shall be construed as the Offeror's BAFO.

4.3.5 EVALUATION OF BEST AND FINAL OFFERS (if necessary)

If Offerors are requested to submit a BAFO, the BAFO offers shall be evaluated pursuant to the evaluation criteria and scoring system in paragraph 4.4.

HCC may schedule and conduct interviews with individual Offerors to better understand and evaluate the Offeror's proposal. HCC reserves the right that all offerors submitting a proposal may not be interviewed.

4.3.6 RECOMMENDATION FOR CONTRACT AWARD

The Evaluation Committee shall prepare a report summarizing proposal evaluation findings/rankings and provide recommendation for award of contract.

4.4 EVALUATION CRITERIA AND VALUE WEIGHT PERCENTAGES

<u>Evaluation Criteria</u>	<u>Value/Weight</u>
Offeror's Company Information Background, Qualification, Experience, and References, Personnel Organization and Staffing	20%
Offeror's Safety Plan Specific safety mitigation techniques, plans, resources and equipment planned to be utilized	10%
Offeror's Installation Plan Specific material, labor, equipment and planned to be utilized	20%
Offeror's Logistics Plan Phasing plan, material laydown, etc.	20%
Offeror's Cost Proposal	30%

4.5 EVALUATION SCORING SYSTEM

The evaluation categories are assigned a value weight percentage, as determined by HCC, totaling 100%. Each category will be rated between one (1) and five (5), with five (5) being the highest (the best rating) by each member of the evaluation committee. The Offeror's total score (see **note** below) will be determined by: a) multiplying the assigned weight value of each category by the numerical rating provided by the evaluation committee member to determine the score for each category; b) totaling the score for all categories of each evaluation committee member; and c) totaling the score of all evaluators.

Note: In determining the total score, the Offeror's cost proposal will be based on total cost and overall value. The lowest costs will receive the highest available rating allocated to costs where the services, products and materials are of equal value. However, scoring may be affected where the value of the offerings vary among the respective proposals.

SECTION 5 – AWARD OF CONTRACT

5.1 AWARD OF CONTRACT

Award of the contract shall be made to the most responsible and responsive Offeror whose proposal is judged/determined, by the Evaluation Committee, to be the most advantageous to the Hawaii Convention Center, considering all evaluation reviews and results.

5.2 CONTRACT AWARD NOTIFICATION

The Contracting Officer will inform the successful Offeror of contract award selection within 48 hours of confirmation. Additionally, an official "contract award notification letter" will be executed by HCC and provided at the earliest date.

5.3 CONTRACT EXECUTION REQUIREMENTS

5.3.1 AGREEMENT (CONTRACT) DOCUMENTS

The Contract shall be executed by HCC and the successful Offeror ("Design-Builder"). This document will serve as the official and legal contractual instrument between both parties. This document will incorporate (by attachments or reference) the RFP, with any and all addendums; the General Conditions and Special Conditions; and the Offeror's accepted proposal, with any and all addendums/changes/negotiated agreements/etc.; all of which together will constitute the "Contract Documents".

A sample of the anticipated Contract is attached hereto as Appendices B and C. **Do not complete or execute the "sample" contract.**

5.3.2 PROOF OF REQUIRED PERMITS

If permits are required for completion of the subject Project, the successful Offeror must obtain and submit to HCC's Contracting Officer Proof of all required permits ("Proof of Required Permits"). The Proof of Required Permits shall be submitted to HCC's Contracting Officer as soon as possible after the successful Offeror is notified of selection. In any event, no work that requires a permit may be started until Proof of Required Permits is submitted to HCC.

5.3.3 GENERAL CONDITIONS

The General Conditions are attached hereto as Exhibit C to Appendix C and shall be part of the Contract Documents.

5.3.4 SPECIAL CONDITIONS

The Special Conditions are attached as Exhibit D to Appendix C and shall be part of the Contract Documents.

5.3.5 CERTIFICATES REQUIRED BY HRS § 103D-310(c)

Pursuant to HRS § 201B, this RFP is subject to Part III of Chapter 103D of the Hawaii Public Procurement Code, Hawaii Revised Statutes. Accordingly, the successful Offeror shall, within three (3) business days of notification of contract award, furnish proof of compliance with the requirements of HRS § 103D-310(c) including the following:

- A. Chapter 237, tax clearance;
- B. Chapter 383, unemployment insurance;
- C. Chapter 386, workers' compensation;
- D. Chapter 392, temporary disability insurance;
- E. Chapter 393, prepaid health care; and
- F. One of the following:
 - a. Registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
 - b. Registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business".

Offerors may choose to use the Hawaii Compliance Express ("HCE"), which allows businesses to register online (<http://vendors.ehawaii.gov>) to acquire a single, printable electronic "Certificate of Vendor Compliance." The HCE provides current compliance status as of the certificate issuance date. The "Certificate of Vendor Compliance," indicating that the Offeror's status is compliant with the requirements of HRS Section 103D-310(c), will be accepted for both contracting purposes and final payment.

5.3.6 CONTRACT EXECUTION

Subsequent to contract award, HCC will present the contract to the successful Offeror for execution. The successful Offeror shall return the signed contract within ten (10) calendar days from the date upon which the contract was presented for signature by HCC, or within such time as HCC shall otherwise allow. The signed contract shall be returned to the Contracting Officer.

The successful Offeror shall provide evidence of the required insurance coverages and bonds when returning the signed contract to HCC.

5.4 CONTRACT COMMENCEMENT DATE

Upon completion of contract execution, a **"Notice to Proceed"** letter will be provided the Design-Builder specifying the "Commencement" (start work) date of the contract. No work is to be undertaken by the Design-Builder prior to the commencement date specified in the Notice to Proceed letter. HCC is not liable for any work, contract, costs, expenses, loss of profits, or any damages whatsoever incurred by the Design-Builder prior to the official, notice to proceed "Commencement" date.

5.5 PROTESTS

Proposal protests, as described in Chapter 7 of HRS 103D, will not be considered by HCC. Offeror(s) may object to an award to another Offeror by sending the Contracting Officer a written objection letter which contains the basis of the objection. The written objection letter must be received by the Contracting Officer within Five (5) business days after the notice of award is sent to all Offerors. The objection will be reviewed by the Chief Procurement Officer (“CPO”) for the HCC, and a written decision will be issued in response to the written objection letter within ten (10) business days. The decision of the CPO is final and binding on the Offeror objecting to the award.

5.6 ACCEPTANCE OF TERMS AND CONDITIONS

By submitting a proposal, an Offeror expressly agrees to all of the terms, conditions, provisions, and requirements set forth in this RFP, the contract, the General Conditions, and the Special Conditions.

APPENDIX A

HCC EVENT SCHEDULE TEMPLATE

Ballroom Roof Repairs Project
for Hawai'i Convention Center
Appendix A

HCC Event Schedule - Subject to Change

# CALENDAR DAYS	DAY OF WEEK	DATE			AM	AM-PM	PM	NOTES
					8:00am	8:00am	4:00pm	
					4:00pm	8:00pm	8:00pm	
32	Saturday	1	July	2023				
33	Sunday	2	July	2023				
34	Monday	3	July	2023				
35	Tuesday	4	July	2023				
36	Wednesday	5	July	2023				
37	Thursday	6	July	2023				
38	Friday	7	July	2023				
39	Saturday	8	July	2023				
40	Sunday	9	July	2023				
41	Monday	10	July	2023				
42	Tuesday	11	July	2023				
43	Wednesday	12	July	2023				
44	Thursday	13	July	2023				
45	Friday	14	July	2023				
46	Saturday	15	July	2023				
47	Sunday	16	July	2023				
48	Monday	17	July	2023				
49	Tuesday	18	July	2023				
50	Wednesday	19	July	2023				
51	Thursday	20	July	2023				
52	Friday	21	July	2023				
53	Saturday	22	July	2023				
54	Sunday	23	July	2023				
55	Monday	24	July	2023				
56	Tuesday	25	July	2023				
57	Wednesday	26	July	2023				
58	Thursday	27	July	2023				
59	Friday	28	July	2023				
60	Saturday	29	July	2023				
61	Sunday	30	July	2023				
62	Monday	31	July	2023				
63	Tuesday	1	August	2023				
64	Wednesday	2	August	2023				
65	Thursday	3	August	2023				
66	Friday	4	August	2023				
67	Saturday	5	August	2023				
68	Sunday	6	August	2023				
69	Monday	7	August	2023				
70	Tuesday	8	August	2023				
71	Wednesday	9	August	2023				
72	Thursday	10	August	2023				
73	Friday	11	August	2023				
74	Saturday	12	August	2023				
75	Sunday	13	August	2023				

76	Monday	14	August	2023				
77	Tuesday	15	August	2023				
78	Wednesday	16	August	2023				
79	Thursday	17	August	2023				
80	Friday	18	August	2023				
81	Saturday	19	August	2023				
82	Sunday	20	August	2023				
83	Monday	21	August	2023				
84	Tuesday	22	August	2023				
85	Wednesday	23	August	2023				
86	Thursday	24	August	2023				
87	Friday	25	August	2023				
88	Saturday	26	August	2023				
89	Sunday	27	August	2023				
90	Monday	28	August	2023				
91	Tuesday	29	August	2023				

APPENDIX B

**AIA DOCUMENT A141 – 2014 PROJECT DRAFT SAMPLE
STANDARD FORM OF AGREEMENT BETWEEN OWNER AND DESIGN-BUILDER**

DO NOT EXECUTE

DRAFT AIA® Document A141® – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the «TBD» day of «TBD» in the year «2023»
(In words, indicate day, month and year.)

BETWEEN the Owner/Manager:
(Name, legal status, address and other information)

«AEG Management HCC, LLC »« a Delaware Limited Liability Company»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»
« »

and the Design-Builder:
(Name, legal status, address and other information)

«TBD»« »
« »
« »
« »

for the following Project:
(Name, location and detailed description)

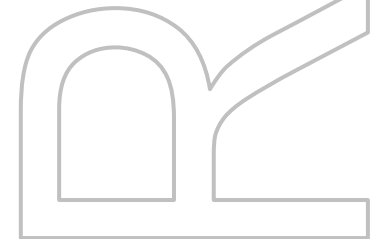
«Ballroom Roof Repairs»
«Hawaii Convention Center ("HCC")»
«1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

The Owner/Manager and Design-Builder agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.



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TABLE OF ARTICLES

1	GENERAL PROVISIONS
2	COMPENSATION AND PROGRESS PAYMENTS
3	GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
4	WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
5	WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
6	CHANGES IN THE WORK
7	OWNER'S <u>MANAGER'S</u> RESPONSIBILITIES
8	TIME
9	PAYMENT APPLICATIONS AND PROJECT COMPLETION
10	PROTECTION OF PERSONS AND PROPERTY
11	UNCOVERING AND CORRECTION OF WORK
12	COPYRIGHTS AND LICENSES
13	TERMINATION OR SUSPENSION
14	CLAIMS AND DISPUTE RESOLUTION
15	MISCELLANEOUS PROVISIONS
16	SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

A	DESIGN-BUILD AMENDMENT
B	INSURANCE AND BONDS
C	<u>SUSTAINABLE PROJECTS</u>

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1. (Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1 Manager's Criteria

This Agreement is based on the Manager's Criteria set forth in this Section 1.1. (Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Manager intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Manager's design documents" where appropriate.)

§ 1.1.1 The Owner's-Manager's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

«This is a turn-key Project. The Project will require repairs to the ballroom roof. There are currently three (3) known active leaks. Repairs are to include but are not limited to a complete replacement of the existing standing seam metal roof or coating the existing standing seam metal roof to make watertight. The Manager's program is subject to further development by the Manager and Design-Builder.»

§ 1.1.2 The Owner's-Manager's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's-Manager's design requirements, including any performance specifications for the Project.)

«All aspects of design & build, project management, supervision, procurement of materials and equipment, labor, all job-related incidental work, and the securing of all required permits, notifications, and/or inspections, including fees for such permits, notifications, and/or inspections, shall be the sole responsibility of the Design-Builder. The Design-Builder shall provide all engineering and design services necessary for the execution of this Project.»

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

«See Attachment F - Project Documents.»

§ 1.1.4 The Owner's-Manager's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's-Manager's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner-Manager identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Manager's Sustainable Objective.)

«None.»

§ 1.1.5 Incentive programs the Owner-Manager intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner-Manager intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

«None»

§ 1.1.6 The Owner's-Manager's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's-Manager's budget, and if known, a line item breakdown of costs.)

«TBD»

§ 1.1.7 The Owner's-Manager's design and construction milestone dates:

.1 Design phase milestone dates:

«TBD»

.2 Submission of Design-Builder Proposal:

«TBD»

.3 Phased completion dates:

«N/A»

.4 Substantial Completion date:

«TBD»

.5 Other milestone dates:

«TBD»

§ 1.1.8 The ~~Owner-Manager~~ requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

.1 Architect

«TBD»

.2 Consultants

«TBD»

.3 Contractors

«TBD»

§ 1.1.9 Additional ~~Owner's-Manager's~~ Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

«§ 1.1.9.1 The Design-Builder agrees that TBD, TBD, and TBD are key personnel whose services and professional experience are essential to the completion of this Project. TBD shall serve as the Principal, and TBD shall serve as the Associate Architect. The Design-Builder shall ensure that these individuals will be available and dedicated throughout this Project and will perform the services within this Agreement throughout the duration of this Project, as appropriate.

§ 1.1.9.2 The Design-Builder agrees to immediately report any personnel problems it is aware of which may adversely affect the Project to the Manager.»

§ 1.1.10 The Design-Builder shall confirm that the information included in the ~~Owner's-Manager's~~ Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the ~~Owner's-Manager's~~ Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the ~~Owner of the conflict-Manager of the conflict~~. The Design-Builder shall become familiar with laws, codes, and regulations applicable to the Design-Builder's services. The Design-Builder shall respond in the design of the Project to requirements imposed by governmental authorities having jurisdiction over the Project.

§ 1.1.11 If there is a change in the ~~Owner's-Manager's~~ Criteria, the ~~Owner-Manager~~ and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 1.1.12 If the ~~Owner-Manager~~ and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™–2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner-Manager identifies the following representative in accordance with Section 7.1.1: All work approvals and authorizations for Additional Services, Change Orders, Claims and Payment Requests must be approved, in writing, by the Manager. Directions from any other personnel which are not approved in writing by the Manager will not be binding according to this Agreement and any loss of revenue to correct unauthorized instructions to the Design-Builder will be at the Design-Builder's sole expense.

(List name, address and other information.)

«Mari Tait
Contracting Officer»
«AEG Management HCC, LLC a Hawaii Limited Liability Company»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»
«Email: hccrfp@hccasm.com»
« »

§ 1.2.2 The persons or entities, in addition to the Owner's-Manager's representative, who are required to review the Design-Builder's Submittals are as follows:

(List name, address and other information.)

«Andrew Tanton
Project and Construction Manager for AEG/HCC (PM/CM)
Cumming Management Group, Inc.
841 Bishop Street, Suite 725
Honolulu, HI 96813
Email: atanton@cumming-group.com»

§ 1.2.3 The Owner-Manager will retain the following consultants and separate contractors:

(List discipline, scope of work, and, if known, identify by name and address.)

«TBD»

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:

(List name, address and other information.)

«TBD»
«TBD»
«TBD»
« »
« »
«Email: TBD»

§ 1.2.5 Neither the Owner's-Manager's nor the Design-Builder's representative shall be changed without ten (10) days' written notice to the other party.

§ 1.2.6 Design-Builder shall provide all necessary personnel, supplies, and equipment required to perform the Design, Pre-construction and Construction services described herein. The Design-Builder understands and agrees that time is of the essence of this Agreement and Design-Builder agrees to take all reasonable steps to avoid delays.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner-Manager and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

[☒] Arbitration pursuant to Section 14.4

[<>] Litigation in a court of competent jurisdiction

[<>] Other: (*Specify*)

<<>>

§ 1.4 Definitions

§ 1.4.1 Design-Build Documents. The Design-Build Documents consist of this Agreement between Owner-Manager and Design-Builder and its attached Exhibits (hereinafter, the "Agreement"); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 The Contract. The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner-Manager and the Design-Builder.

§ 1.4.3 The Work. The term "Work" means the design, construction and related services required to fulfill the Design-Builder's obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 The Project. The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner-Manager and by separate contractors.

§ 1.4.5 Instruments of Service. Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 Submittal. A Submittal is any submission to the Owner-Manager for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 ~~Owner.~~ The Owner-Manager. The Manager is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "~~Owner~~" "Manager" means the Owner-Manager or the Owner's Manager's authorized representative.

§ 1.4.8 Design-Builder. The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative.

§ 1.4.9 Consultant. A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 Architect. The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as "confidential."

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

§ 1.4.16 **Approved.** When the words "approved", "satisfactory", "proper", or "as directed" are used, approval by the Manager shall be understood.

§ 1.4.17 **Provide.** When the word "provide" including derivatives thereof is used, it shall mean to properly fabricate, complete, transport, deliver, install, erect, construct, test and furnish all labor, materials, equipment, apparatus, appurtenances, and all items and expenses necessary to properly complete in place, ready for operation or use under the terms of the specifications and contract documents.

§ 1.4.18 **Knowledge.** The terms "knowledge", "recognize", and "discover", their respective derivatives and similar terms used in the Contract Documents, as used in reference to the Design-Builder, shall be interpreted to mean that which, in accordance with community standards and expectations, the Design-Builder knows or should reasonably know as defined by the conditions or environment, recognizes or discovers, in exercising the care, skill, and diligence required of the Design-Builder by the Contract Documents.

§ 1.4.19 **Persistently.** The phrase "persistently fails" and other similar expressions as used in reference to the Design-Builder, shall be interpreted to mean any combination of act and omissions which cause the Manager to reasonably conclude that the Design-Builder will not complete the Work within the Contract Time, for the Contract Sum or in substantial compliance with the requirements of the Contract Documents.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 Compensation for Work Performed Prior To Execution of Design-Build Amendment

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner-Manager shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

«Design Services are a not-to-exceed amount of TBD Dollars (\$TBD) and shall be compensated on a percent complete basis.»

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«Attachment C – Design-Builder and Design-Builder's Architect, Consultant and Contractor's Hourly Billing Rates»

Individual or Position

Rate

§ 2.1.3 Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Build and the Design-Build's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the ~~Owner~~Manager;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the ~~Owner~~Manager;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the ~~Owner~~Manager, supported with and by detailed documentation and back-up.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Build and the Design-Build's Architect, Consultants and Contractors incurred, plus an administrative fee of ~~percent (—%) of the expenses incurred.~~percent (—%) of the expenses incurred. Reimbursables shall be paid at actual costs expended up and to a maximum not-to-exceed amount of TBD dollars (\$TBD) and are not included in the Compensation in 2.1.1.

§ 2.1.4 Payments to the Design-Build Prior To Execution of Design-Build Amendment

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Build's invoice. Amounts unpaid ~~(—)~~(—) ~~«thirty»~~«30» days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Build.
(Insert rate of monthly or annual interest agreed upon.)

~~«6»~~ % ~~«per annum»~~

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the ~~Owner~~Manager at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.1.4.3 The Design-Build must, following execution of this Agreement, provide the Manager with a copy of its W-9.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Build's performance of the Work after execution of the Design-Build Amendment, the ~~Owner~~Manager shall pay to the Design-Build the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Build shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Build shall designate in writing a representative who is authorized to act on the Design-Build's behalf with respect to the Project.

§ 3.1.3 The Design-Build shall perform the Work in accordance with the Design-Build Documents. The Design-Build shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the ~~Owner~~Manager.

§ 3.1.3.1 The Design-Build shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Build performs Work contrary to

applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner-Manager, including those in the Owner's Manager's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner-Manager in writing. Upon verification by the Owner-Manager that a change to the Owner's Manager's Criteria is required to remedy the violation, the Owner-Manager and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner-Manager for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.4.1 Notwithstanding anything to the contrary in this Agreement, in the event of a conflict or discrepancy among or in the Contract Documents as revised by the Manager and Design-Builder for this Project, interpretation shall be governed in the following priority, with Special Conditions (Exhibit D) having ultimate precedence, modification having precedence over the original document and any later modifications having precedence over earlier modifications to the same Contract Document (from top to bottom, highest to lowest priority, respectively):

- .1 Special Conditions, attached hereto as Exhibit D
- .2 General Conditions, attached hereto as Exhibit C;
- .3 Change Orders and Modifications issued after the date of the Agreement (A141-2014), incl. Exhibit A (Design-Build Amendment);
- .4 Agreement, AIA A141-2014 as modified by the parties;
- .5 A141-2014, Exhibit B (Insurance and Bonds);
- .6 Other Exhibits to the Agreement;
- .7 Drawings;
- .8 Specifications; and
- .9 Contractor's GMP Clarifications and Qualifications

§ 3.1.4.2 The Manager shall assume the rights and responsibilities of the defined terms of both ("STATE") and ("HOPA"), and the Design-Builder shall assume the rights and responsibilities of ("CONTRACTOR"), as defined within the Exhibit C (General Conditions) attached hereto. This shall apply to all Contract Documents under this Agreement.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner Manager to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner-Manager understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner-Manager, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner-Manager informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner-Manager and Design-Builder, the Design-Builder shall submit written progress reports to the Owner-Manager, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner-Manager;

- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;
- .8 Status report of Work rejected by the ~~Owner;~~ Manager;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the ~~Owner and Design-Builder;~~ Manager and Design-Builder.

If the Manager provides a written request for daily construction reports, the Design-Builder shall submit said reports by no later than three (3) days after request by the Manager.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, and in no event more than thirty (30) consecutive days thereafter shall prepare and submit for the ~~Owner's~~ Manager's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the ~~Owner's~~ Manager's review and for approval of submissions by authorities having jurisdiction over the ~~Project.~~ Project, as well as milestone dates. The Project schedule shall coordinate and integrate design, preconstruction and construction activities of the Architect's services, the Design-Builder's services, other Manager consultants' services, and the Manager's responsibilities as well as identify major milestone items that could affect the Project's timely completion. The schedule shall include, but not be limited to the following: Schematic Design, Design Development, Construction Documents, Bidding, the Design/Build Amendment, components of the Work, times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered well in advance of construction; and the occupancy requirements of the Manager.

§ 3.1.9.1.1 At the time of the finalization of the Design/Build Amendment, the Design-Builder will submit a Construction Schedule in a computer-generated critical path method (CPM) format to the Manager. The Construction Schedule shall show separate activities for every trade anticipated to participate in the Work, the durations and dependencies of those activities, the critical path, and all other information normally included in such schedules. The Work activity descriptions and durations shall be as agreed upon by the Design-Builder and the Manager, but unless otherwise agreed, the duration for each activity shall not exceed fifteen (15) calendar days. The Construction Schedule must also incorporate the sequencing and interrelationship between each of the trades. The Design-Builder shall include within the Construction Schedule a specific number of weather delay days per year for the duration of the Project. Design-Builder shall state its assumptions used to determine the number of weather delay days.

§ 3.1.9.1.2 The Construction Schedule shall be revised by the Design-Builder at least monthly or when directed to do so more frequently by the Manager. All revised Construction Schedules must demonstrate updates and or changes from the previously approved Construction Schedule. Should the Design-Builder fail to maintain an acceptable level of progress by failing to meet one of the scheduled milestone dates, Design-Builder shall provide Manager with a written recovery plan and recovery network schedule to ensure compliance with the agreed upon construction schedule and date of Substantial Completion. If Design-Builder fails to provide a written recovery plan and recovery network schedule within seven (7) calendar days after receipt of written notification from a representative of the Manager that a recovery schedule is required, Manager may take the following actions: (1) Any payments due to Design-Builder may be withheld, in part or in full; or (2) Design-Builder may be terminated by Manager if Design-Builder repeatedly fails to meet the construction schedule requirements, and/or fails to make satisfactory progress as determined by Manager.

§ 3.1.9.1.3 The Design-Builder shall also prepare a three (3) week look-ahead schedule each week for review at the Manager meetings, focusing on the in-depth detail of the upcoming weeks' activities in a manner that reflects the planned day-to-day activities in the field. The detail shall be adequate to allow tracing of daily progress through field observation walks and reports.

§ 3.1.9.1.4 Receiving revised schedules at the weekly Manager meeting or in another format shall not be construed as an acceptance by the Manager. Any revision to the approved Construction Schedule requires the Manager's written approval. Any adjustment in the Contract Time or date of Substantial Completion requires a Change Order.

§ 3.1.9.1.5 During Construction, the Design-Builder shall keep detailed daily logs and submit these logs to the Manager each week at the Manager meetings. The detailed written daily logs shall include a description of the Work performed the previous week. Each such daily report shall be prepared and signed by the Project Manager or Superintendent, on behalf of the Design-Builder. Each report shall at a minimum include the following information for that day concerning the Design-Builder and each Subcontractor (including each Sub-Subcontractor): materials and equipment being installed, number of individuals working, the hours worked, the type and location of the work being performed by each trade and each item of major equipment being used. The report shall also include other information such as temperature and weather recorded during the work period and any significant events occurring on the job site with regard to the Work or the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the ~~Owner~~-Manager.

§ 3.1.10 Certifications. Upon the ~~Owner's~~-Manager's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the ~~Owner~~-Manager, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the ~~Owner~~-Manager and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the ~~Owner's~~-Manager's approval. The ~~Owner's~~-Manager's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the ~~Owner~~-Manager reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the ~~Owner~~-Manager that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the ~~Owner~~-Manager has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the ~~Owner~~-Manager in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the ~~Owner's~~-Manager's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner-Manager and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 **Warranty.** The Design-Builder warrants to the Owner-Manager that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner-Manager, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.12.1 Design-Builder agrees to warrant the quality of Work, materials and equipment provided for a period of one (1) year from the date of Substantial Completion, except where longer periods for certain items are provided in the Project Manual or where a manufacturer's warranty is for a longer period. Design-Builder agrees to make all necessary repairs to the Work and to replace or repair any defective material and equipment during the warranty period. Design-Builder agrees to transfer all equipment and manufacturer's warranties to Manager for all equipment, material and products provided as part of the Project. Nothing in this paragraph shall be construed to waive or limit any other claims, actions or warranties as may be made or brought on behalf of the Manager. This paragraph shall not require Design-Builder to repair or replace any Work, material or equipment damaged as a result of the negligence of the Manager. Manufacturer's warranties and Subcontractor's warranties shall not relieve the Design-Builder of any of its warranty obligations under the Contract Documents. All manufacturers and Subcontractor's warranties shall be assigned by Design-Builder to Manager at final payment of the Contract Sum.

§ 3.1.12.2 If there is a conflict within the Contract Documents for the warranty period, the longest duration of time stated shall govern. As Work required on warranty is complete, rework, repair or replacement of Work not properly performed or the result of defective material or workmanship, the Manager will not compensate the Design-Builder or Subcontractors and material and equipment suppliers for the warranty Work.

§ 3.1.12.3 All warranty items are the responsibility of the Design-Builder. When warranty items occur, the Manager will notify the Design-Builder or appropriate Subcontractor. The Design-Builder shall cause Work to commence on any warranty items within seven (7) days. If the warranty item(s) are impacting safety or rendering the Project or a portion of the Project unfit for its intended use or specific purpose, the Design-Builder shall take any and all measures to resolve the warranty item(s) immediately. This shall include the acceleration of labor, material and equipment, all to implement the resolution of the items or issues, regardless of the cost to achieve resolution. All costs associated with the resolution of the warranty issue(s) shall remain the responsibility of the Design-Builder.

§ 3.1.13 **Royalties, Patents and Copyrights**

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner-Manager and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner-Manager, or where the copyright violations are required in the Owner's Manager's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Manager's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner-Manager. If the Owner-Manager receives notice from a patent or copyright owner-Manager of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner-Manager shall give prompt written notice to the Design-Builder.

§ 3.1.14 **Indemnification**

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall ~~indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or~~ indemnify, defend, and hold harmless the Company Indemnitees (as defined in Exhibit B, Section B.2.1.5), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Design-Builder or its sub-consultants or contractors), expense and liability of every kind, nature, and description (including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, fees of expert consultants or witnesses in litigation, and costs of investigation), that arise directly or indirectly, in whole or in part, from (a) the Services under this Agreement, or any part of such Services, and (b) any negligent, reckless, or willful act or omission of the Design-Builder, any sub-consultant or contractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, them, or anyone that they control, unless due to the negligence or willful misconduct of the Company Indemnitees. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14-paragraph.

The Design-Builder shall defend the Company Indemnitees using counsel selected by the Design-Builder and approved by the Manager. The Design-Builder's obligations shall include the obligation to pay reasonable attorneys' fees and costs in connection with such defense.

The Design-Builder shall also indemnify, defend and hold harmless all Company Indemnitees from all suits or claims by a third party for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the Company Indemnitees of articles or services to be supplied in the performance of the Design-Builder's Services under this Agreement. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of the Agreement.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the ~~Owner, Manager,~~ provided that

- .1 assignment is effective only after termination of the Contract by the ~~Owner Manager~~ for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the ~~Owner Manager~~ accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the ~~Owner Manager~~ accepts the assignment of an agreement, the ~~Owner Manager~~ assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than ~~30-thirty (30)~~ days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the ~~Owner Manager~~ under this Section 3.1.15, the ~~Owner Manager~~ may further assign the agreement to a successor design-builder or other entity. If the ~~Owner Manager~~ assigns the agreement to a successor design-builder or other entity, the ~~Owner Manager~~ shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.15.4 To the extent that the Manager elects to accept assignment of subcontracts and purchase orders (including rental agreements), the Design-Builder shall execute and deliver all such papers and take all such steps, including the assignment of such subcontracts and other contractual rights of the Design-Builder, as the Manager may require for the purpose of fully vesting in the Manager the rights and benefits of the Design-Builder under such subcontracts or

purchase orders. All contracts between Design-Builder and Subcontractors (including without limitation purchase orders, other contracts for purchase of materials and rental agreements) entered into by the Design-Builder shall contain provisions allowing for assignment to the Manager as described above and further assignment by Manager.

§ 3.1.16 Design-Builder's Insurance and Bonds. The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner-Manager, shall be for the purpose of facilitating the design process and shall not modify the Owner's-Manager's Criteria unless the Owner-Manager and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner-Manager on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner-Manager with recommendations, consistent with the Owner's-Manager's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

~~§ 4.2 Evaluation of the Owner's Criteria~~

§ 4.2 Evaluation of the Manager's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner-Manager and any other necessary individuals or entities to discuss and review the Owner's-Manager's Criteria as set forth in Section 1.1. The Section 1.1. The Design-Builder shall thereafter again meet with the Owner-Manager to discuss a preliminary evaluation of the Owner's-Manager's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner-Manager and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner-Manager, summarizing the Design-Builder's evaluation of the Owner's-Manager's Criteria. The report shall also ~~include~~include:

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget; Manager's Criteria to conform to the Manager's budget in the Manager's requested format;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner-Manager; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner-Manager; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

«All requirements as stipulated in section 3.1.9 regarding Schedule»

§ 4.2.3 The Owner-Manager shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's-Manager's Criteria unless the Owner-Manager and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's-Manager's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner-Manager. The Preliminary Design shall include a report identifying any deviations from the Owner's-Manager's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan; Intentionally deleted;
- .3 Building plans, sections and elevations;

- .4 ~~Structural system; Intentionally deleted;~~
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The ~~Owner-Manager~~ shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the ~~Owner's Criteria unless the Owner and Design-Builder execute a Modification-Manager's Criteria unless the Manager and Design-Builder execute a Modification.~~

§ 4.3.3 The Design-Builder, shall provide fully qualified, trained, licensed and competent persons who shall provide Work and services safely and effectively. The Design-Builder shall maintain evidence for every person providing services hereunder of education and training consistent with applicable legal and regulatory requirements, professional licensure, competence and background checks, as may be required by law. Prior to the provision of any services, Design-Builder shall provide Manager with copies of appropriate information and primary source verification for each person who shall provide services under this Agreement. All persons providing services hereunder shall have the necessary credentials and privileges prior to provision of any services and all services provided shall be within the scope of such credentials and privileges.

§ 4.3.4 The Design-Builder shall be responsible for the coordination of all drawings and design documents relating to Design-Builder's design and used on the Project, regardless of whether such drawings and documents are prepared by Design-Builder or by Design-Builder's, contractors, consultants, Subcontractors or subconsultants, provided the Design-Builder is entitled to rely upon the technical accuracy and professional competency of all materials, data, designs and other information provided to it by others who are not Design-Builder's consultants. Design-Builder's coordination shall include the internal checking of all drawings. Design-Builder shall be responsible for the completeness and accuracy of all drawings and specifications submitted by Design-Builder and its contractors, consultants, Subcontractors and sub consultants and for their compliance with all applicable codes, ordinances, regulations, laws and statutes.

§ 4.3.5 Project planning includes representation from the Design-Builder all relevant project planning meetings with the Manager. Along with meetings, the Design-Builder shall participate in the preparation of design package scope and scheduling needs with the Manager. This will include participation in collaboration methods, as the project requires (drawing review collaboration, posting of meeting minutes, specifications, etc.). The Design-Builder is responsible for coordinating and scheduling the formal design coordination meetings with the Building Renovation Architect and Engineer.

§ 4.3.6 Record Drawings shall be prepared by the Design-Builder. The Design-Builder will submit, as a deliverable; the electronic version of record drawings including the assembly of all addenda, field bulletins, design change orders, and Requests for Information (RFI's), and contractor red line "as-builts". At a minimum, record documents shall be generated within thirty (30) days of submission of the Contractor's red lines. Soft copies of the record drawings shall be transmitted to the Manager. The drawings will be "bound" with all associated "Xref's" included.

§ 4.3.7 Calculations: The Design-Builder is responsible for providing the necessary engineering calculations for the execution of each design as required for the project specific scope of work. This includes, but not limited to, structural calculations, electrical, mechanical, pipe stress analysis including hanger and guide design, pipe sizing, and pressure drop calculations for process piping systems including updates based on record drawings.

§ 4.3.9 Project Documentation and Turnaround: Requests for Information shall have an average turnaround time of two (2) working days. Submittals and shop drawings shall have an average of five (5) working days turn around. Durations are from the time of Design-Builder receipt to the time of Prime Contractor receipt.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's Manager's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner-Manager. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents-Drawings and Specifications and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Manager's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories-categories including a detailed estimate broken down by CSI division incorporating Subcontractor bids, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum; Sum including indirect costs such as insurance and bonds in the format approved by the Manager, and a detailed list of all anticipated General Conditions costs;
- .3 The-A critical path method (CPM) Construction Schedule, including the proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner-Manager and Design-Builder agree on a proposal, the Owner-Manager and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner-Manager for the Owner's Manager's information. If the Owner-Manager discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner-Manager shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner-Manager and Design-Builder execute a Modification. The failure of the Owner-Manager to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner-Manager and Design-Builder agree in writing, construction may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's Manager's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters. Design-Builder shall perform Construction services in accordance with the terms and conditions of this Agreement and the other Contract Documents. Design-Builder and its Subcontractors shall perform all Work and services as necessary to complete the Project in accordance with the Project Drawings, Specifications, approved Change Orders, and the other Contract Documents. Design-Builder shall provide all necessary labor, materials, equipment, tools and services required to complete the Project in accordance with the Contract Documents. Design-Builder agrees that time is of the essence of this Agreement and Design-Builder further agrees to take all reasonable steps to avoid delays.

§ 5.2.5 Review of Site and Drawings

Design-Builder shall inspect the jobsite, all existing conditions, and shall carefully review all Project Drawings, Specifications, surveys, and test results prior to beginning the Work. Design-Builder shall take field measurements of existing conditions and shall compare the existing conditions with the information contained in the Drawings and Specifications. Design-Builder shall not receive any additional payments or compensation for Work or services that were accessible prior to construction and that could have been reasonably avoided by reviewing carefully all Project Drawings or Specifications or by inspecting the Project site and existing conditions.

§ 5.2.6 Safety Responsibility

Design-Builder shall be solely responsible for job site safety and shall immediately report any and all job site accidents, including both injury accidents and non-injury accidents to the Manager immediately after the accident becomes known to the Design-Builder. Design-Builder shall have full and sole authority for all safety programs and precautions in connection with the Work. Design-Builder shall use all reasonable efforts to protect the Manager against any deviations or defects in the completed construction Work. Design-Builder shall use all reasonable efforts to protect the Manager and its employees and visitors from personal injury and property damages. Design-Builder shall have full authority to take any action whatsoever on the site regarding safety precautions and procedures.

§ 5.2.7 Conduct of Personnel

Design-Builder's employees, officers, agents, representatives and Subcontractors shall conduct themselves in an appropriate and professional manner at all times while working with and for the Manager. Any such individual who behaves in an inappropriate manner, or who engages in the use of inappropriate language or conduct while on the Manager's property, as determined by the Manager, shall be removed from the Manager's property at the Manager's request. Such individual shall not be permitted to return without the written permission of the Manager. The Manager shall not be responsible or liable to Design-Builder or any Subcontractor for any additional costs, expenses, losses, claims or damages incurred by Design-Builder or its Subcontractors as a result of the removal of any individual(s) from the Manager's property.

§ 5.2.8 Work Area

Design-Builder shall ensure that the job site and surrounding area are kept reasonably free from trash and waste building material. Design-Builder shall ensure that the job site and surrounding area are cleaned at least twice daily in accordance with the Manager's requirements. If, after receiving written notice of its failure to maintain a clean work site, Design-Builder fails to adhere to the requirements of the Manager regarding trash removal and clean-up, the Manager may use its own personnel to clean the site and surrounding area at the Design-Builder's sole expense. Such amounts may be deducted from Design-Builder's payment or billed directly to the Design-Builder.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.3.4 All personnel working on the Manager's property are required to be US Citizens or, at minimum, have Permanent Resident Alien status; each Bidder shall provide proof of such for each of its employees working on the project.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner-Manager before conditions are disturbed and in no event later than 21-twenty-one (21) days after first observance of the conditions. The Owner-Manager shall promptly investigate such conditions and, if the Owner-Manager determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner-Manager determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner-Manager shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's Manager's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner-Manager. Upon receipt of such notice, the Owner-Manager shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner-Manager but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner-Manager may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner-Manager shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection-Manager selection. The Design-Builder shall separately track, on no less than a monthly basis, all materials and equipment provided under allowances including, but not limited to, (i) a description of

[the allowance; \(ii\) amounts actually spent for each allowance; and \(iii\) variances between allowance amounts in the Contract Sum and amounts actually spent.](#)

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the [Owner Manager](#) has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the [Owner Manager](#) and provide the name and qualifications of the new personnel, Contractor or supplier. The [Owner Manager](#) may reply within ~~14~~ [fourteen \(14\)](#) days to the Design-Builder in writing, stating (1) whether the [Owner Manager](#) has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the [Owner Manager](#) requires additional time to review. Failure of the [Owner Manager](#) to reply within the 14-day period shall constitute notice of no reasonable objection. [If the Design-Builder replaces any key staff member of its team for any reason, the Manager must be provided with a detailed resume in advance and then an opportunity to meet with and approve the proposed replacement staff member prior to assignment to the Project. No such approval shall in any way relieve the Design-Builder of responsibility for the performance and actions of its employees, contractors and agents in connection with the Project.](#)

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the [Owner Manager](#) the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The [Owner Manager](#) may reply within ~~14~~ [fourteen \(14\)](#) days to the Design-Builder in writing stating (1) whether the [Owner Manager](#) has reasonable objection to any such proposed person or entity or (2) that the [Owner Manager](#) requires additional time for review. Failure of the [Owner Manager](#) to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the [Owner Manager](#) has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the [Owner Manager](#) has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the [Owner Manager](#) one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the [Owner Manager](#) in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment. [Design-Builder acknowledges that there may be unique site considerations applicable to the development and construction of the Project including, without limitation, \(i\) the necessity to perform the work in areas adjacent to existing services and buildings; \(ii\) limited availability of space within the project site for on-site storage of materials, parking, and for other than essential construction operations; and \(iii\) the need for careful scheduling of construction services to minimize to the greatest extent possible or eliminate any disruption to the surrounding facilities. Design-Builder shall plan its Work in a manner that does not have a negative impact on the facilities in immediate proximity to the Project. Therefore, Design-Builder shall provide strict guidelines related to hours of operation, noise levels, on street parking, off-site transportation, material delivery and general site logistics, all in a manner that assures the Manager and the neighborhood minimum disruption throughout the course of the Project. The related site logistics plan must be approved by the Manager prior to Work beginning, and the site logistics plan must be included within the bid documents to Subcontractors, vendors and suppliers.](#)

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch or otherwise alter fully or partially completed construction by the [Owner Manager](#) or a separate contractor except with written consent of the [Owner Manager](#) and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the [Owner Manager](#) or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the [Owner Manager](#) may do so and [Owner Manager](#) shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the [Owner Manager](#) and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the [Owner Manager](#) regarding Project safety criteria and programs, which the [Owner Manager](#), and its contractors and consultants, shall comply with while at the site.

~~§ 5.13 Construction by Owner or by Separate Contractors~~

~~§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts~~

~~§ 5.13 Construction by Manager or by Separate Contractors~~

~~§ 5.13.1 Manager's Right to Perform Construction and to Award Separate Contracts~~

§ 5.13.1.1 The [Owner Manager](#) reserves the right to perform construction or operations related to the Project with the [Owner's Manager's](#) own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The [Owner Manager](#) shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the [Owner Manager](#), the Design-Builder shall make a Claim as provided in Article 14. [Design-Builder agrees to allow access to the Project site and all areas of the Work as may be reasonably necessary for the performance of work by others, including, without limitation, storage of materials and equipment and connection to utilities and services. Such parties shall abide by all safety program requirements of Design-Builder.](#)

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the [Owner Manager](#).

§ 5.13.1.3 The [Owner Manager](#) shall provide for coordination of the activities of the [Owner's Manager's](#) own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the [Owner Manager](#) in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the [Owner Manager](#) until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the [Owner Manager](#) performs construction or operations related to the Project with the [Owner's Manager's](#) own forces or separate contractors, the [Owner Manager](#) shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the [Owner Manager](#) and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner-Manager or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner-Manager, identifying apparent or discovered discrepancies or defects in the construction or operations by the Owner-Manager or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's-Manager's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner-Manager for costs the Owner-Manager incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner-Manager shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner-Manager or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner-Manager and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner-Manager or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

~~If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.~~

§ 5.15 Manager's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Manager as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Manager may clean up and will allocate the cost among those who the Manager deems are responsible which allocation will be binding on Design-Builder's and Manager's separate contractors, and Design-Builder shall promptly pay to Manager its share of the costs as so determined.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1 General, Also See Sections 19, 20, 21, 22 and 23 of Exhibit C (General Conditions)

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations-procedures stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner-Manager and Design-Builder. The Owner-Manager may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner-Manager and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

The Design-Builder acknowledges and agrees that the Contract Sum and Contract Time cannot be adjusted without a properly executed Change Order.

§ 6.2.4 The Contract Sum will be modified only for the following reasons:

- .1 If the scope of Work is changed by the Manager;
- .2 If unforeseen or hidden conditions are encountered which the Design-Builder could not reasonably have foreseen or for which Design-Builder has no responsibility;
- .3 Costs which could not be reasonably inferred based on the Design-Builder's knowledge and relevant experience related to this Project type.

§ 6.2.5 Any additive adjustment to the Contract Sum shall include such markups for overhead and profit as follows:

§ 6.2.5.1 The maximum allowable mark-up for Change Orders during Construction by Subcontractors for Self-Performed Work shall be ten percent (10%) for overhead plus five percent (5%) for profit (a total of 15%). The maximum allowable mark-up by the Subcontractor on its sub-subcontractors shall be five percent (5%).

§ 6.2.5.2 The maximum allowable mark-up for Change Orders during Construction by sub-subcontractors for Self-Performed Work shall be ten percent (10%) for overhead plus five percent (5%) for profit (a total of 15%). The maximum allowable mark-up by the sub-subcontractor on its sub-subcontractors shall be five percent (5%).

§ 6.2.6 The total maximum allowable mark-up by a Subcontractor and sub-subcontractors for Change Orders during Construction shall be twenty percent (20%).

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner-Manager directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner-Manager may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1** Mutual acceptance of a lump sum or not to exceed amount properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2** Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3** Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4** As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner-Manager or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner-Manager of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner-Manager shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner-Manager may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance; insurance, or at the billing rates reflected in the Agreement;
- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner-Manager for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner-Manager, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner-Manager will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's-Manager's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14. The Manager will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Manager determines to be reasonably justified.

§ 6.3.10 When the Owner-Manager and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner-Manager and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

§ 6.3.11 A field directive or field order shall not be recognized as having any impact upon the Contract Sum or the Contract Time and Design-Builder shall have no claim therefore unless it shall notify the Manager, prior to complying with same and in no event later than ten (10) business days from the date such direction or order was given, that Design-Builder shall prepare and submit to the Architect and Manager for Manager's approval its change proposal within ten (10) business days following the issuance of the field directive or field order, taking into account the nature and extent of the change to the Work required thereby.

ARTICLE 7 – OWNER'S § 6.3.12 When submitting its change proposal, Design-Builder shall include and set forth, in clear and precise detail, breakdowns of labor, materials and all mark-ups for all trades involved and the estimated impact on the Construction Schedule. Design-Builder shall furnish spreadsheets from which the breakdowns were prepared, plus spreadsheets if requested of any Subcontractors and detailed breakdown from Subcontractors.

ARTICLE 7 MANAGER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner-Manager shall designate in writing a representative who shall have express authority to bind the Owner-Manager with respect to all Project matters requiring the Owner's-Manager's approval or authorization.

§ 7.1.2 The Owner-Manager shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. ~~The Owner-Manager.~~ The Manager shall furnish to the Design-Builder, within ~~45~~ fifteen (15) days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's Manager's interest therein.

~~§ 7.2 Information and Services Required of the Owner~~ § 7.2 Information and Services Required of the Manager

§ 7.2.1 The Owner-Manager shall furnish information or services required of the Owner-Manager by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner-Manager shall provide, to the extent under the Owner's-Manager's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner-Manager shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's-Manager's control.

§ 7.2.3 The Owner-Manager shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner-Manager shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner-Manager under this Agreement, shall be furnished at the Owner's-Manager's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner-Manager advises the Design-Builder to the contrary in writing, the Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner-Manager observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner-Manager shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner-Manager provide reasonable evidence that the Owner-Manager has made financial arrangements to fulfill the Owner's-Manager's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner-Manager fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's-Manager's ability to make payment when due. The Owner-Manager shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner-Manager furnishes the evidence, the Owner-Manager shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner-Manager shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner-Manager shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for

investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner-Manager shall purchase and maintain insurance as set forth in Exhibit B-B (Insurance and Bonds).

§ 7.3 Submittals

§ 7.3.1 The Owner-Manager shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's-Manager's action will be taken in accordance with the submittal schedule approved by the Owner-Manager or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's-Manager's judgment to permit adequate review. The Owner's-Manager's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's-Manager's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner-Manager, of any construction means, methods, techniques, sequences or procedures. The Owner's-Manager's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner-Manager shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner-Manager discovers.

§ 7.4 Visits to the site by the Owner-Manager shall not be construed to create an obligation on the part of the Owner-Manager to make on-site inspections to check the quality or quantity of the Work. The Owner-Manager shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner-Manager shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner-Manager shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner-Manager has the authority to reject Work that does not conform to the Design-Build Documents. The Owner-Manager shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner-Manager nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner-Manager to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner-Manager shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

~~§ 7.8 Owner's Right to Stop Work~~ § 7.8 Manager's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner-Manager may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner-Manager to stop the Work shall not give rise to a duty on the part of the Owner-Manager to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.8.1 Manager shall, at its convenience, have the right to stop work due to an event or any other circumstance. If Contractor believes that it has been impacted by the stop work order, Contractor may submit the reasons it believes it has been impacted via a change order.

§ 7.9 Owner's Right to Carry Out the Work § 7.9 Manager's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ~~ten day~~ ten (10) day period after receipt of written notice from the Owner-Manager to commence and continue correction of such default or neglect with diligence and promptness, the Owner-Manager may, without prejudice to other remedies the Owner-Manager may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner-Manager.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner-Manager in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner-Manager or of a consultant or separate contractor employed by the Owner-Manager; or by changes ordered in the Work by the Owner-Manager; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner-Manager pending mediation and binding dispute resolution or by other causes that the Owner-Manager determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner-Manager may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner-Manager a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner-Manager may require. This schedule, unless objected to by the Owner-Manager, shall be used as a basis for reviewing the Design-Builder's Applications for ~~Payment~~ Payment, and shall not vary therefrom unless agreed to by the Manager.

§ 9.2.1 The Design-Builder shall prepare a trade payment breakdown for the Work for which each trade is responsible, such breakdown being submitted on the uniform, standardized form approved by the Manager. The form shall be divided in detail sufficient to exhibit areas, floors and/or sections of Work and/or by convenient units, and shall be updated as required by either the Manager as necessary to reflect 1) the description of the Work; 2) total value; 3) percentage of Work completed to date; 4) value of the Work completed to date; 5) percent of previous amount billed;

6) previous amount billed; 7) current percent completed; and 8) value of the Work completed to date. Any breakdown which fails to include sufficient detail is unbalanced or exhibits "frontloading" of the value of the Work shall be rejected. If trade breakdown has been initially approved, and subsequently used, but later found improper for any reason, sufficient funds shall be withheld from future applications for payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten (10) days before the date established for each progress payment, the Design-Builder shall submit to the Owner-Manager an itemized Application for Payment for completed portions of the Work-Work, a "pencil draw". The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner-Manager may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents. Each Application for Payment shall be accompanied by the following, in a form and substance satisfactory to the Manager:

- a) A current Design-Builder's lien waiver, conditioned upon payment, showing all Subcontractors and materialmen with whom the Design-Builder has entered into subcontracts, the amount of each such subcontract, the amount requested for any Subcontractor and materialmen in the requested progress payment, and the amount to be paid to the Design-Builder from such progress payment from all such Subcontractors and materialmen;
- b) Duly executed waivers of mechanics' and materialmen's liens from all Subcontractors establishing payment or satisfaction of payment of all amounts requested by the Design-Builder on behalf of such entities or persons in any previous application for payment.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner-Manager, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay. If the Design-Builder or Subcontractor intends to withhold payments to a Subcontractor or material or equipment supplier for any reason, those funds shall not be included within an Application for Payment to the Manager. Manager has the right to request and Design-Builder shall then also provide written evidence from the Design-Builder that the Design-Builder has properly paid Subcontractors, Sub-subcontractors, vendors and suppliers amounts paid by the Manager to the Design-Builder for subcontracted Work. If the Design-Builder fails to furnish such evidence with ten (10) days, the Manager shall have the right to contact Subcontractors and Sub-subcontractors to ascertain whether they have been properly paid. Neither the Manager nor Architect shall have an obligation to pay or to see the payment of money to a Subcontractor, except as may otherwise be required by law. Manager's inquiry of payment to Subcontractors, vendors and suppliers in no way relieves Design-Builder of its responsibility to ensure payment.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, Manager, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner-Manager to establish the Owner's-Manager's title to such materials and equipment or otherwise protect the Owner's-Manager's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site. For materials and equipment stored off-site, the Design-Builder shall provide Manager a certificate of property insurance for the stored materials and/or equipment with the Manager and the City and County of Honolulu listed as an additional insured and loss payee, an itemized list of the stored materials and/or equipment, a bill of sale for the stored materials and/or equipment in the exact dollar value for the product and a site visit to the bonded and insured storage location to verify materials and/or equipment are in storage at the agreed location to be coordinated by the Design-Builder, all satisfactory to the Manager in its discretion.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner-Manager no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner-Manager shall, to the best of the Design-Builder's

knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.3.4 Before the Design-Builder shall become entitled to any progress or final payments under the terms of this Contract, the Design-Builder must first submit waivers of liens on a form approved by the Manager. The required waivers of liens are required from the Design-Builder and all Subcontractors and Sub-subcontractors with each application for payment in the following manner:

- .1 Partial Conditional waivers of liens are required from the Design-Builder and all Subcontractors and material suppliers for whom the Design-Builder is requesting disbursement within the current Application for Payment.
- .2 Partial Unconditional waivers of liens are required from the Design-Builder and all Subcontractors and material suppliers for which Design-Builder previously received payment.
- .3 Final Conditional waivers of liens are required from the Design-Builder and all Subcontractors and material suppliers for whom the Design-Builder is requesting disbursement within the current Application for Payment.
- .4 Final Unconditional waivers of liens are required from the Design-Builder and all Subcontractors and material suppliers for which Design-Builder previously received final payments. Final Unconditional waivers of liens are due within ten (10) days of receipt of final payment to the Design-Builder or Subcontractors or material suppliers. Failure to comply shall constitute a default by Design-Builder.

§ 9.3.5 Failure to provide the proper waivers of liens shall result in payments or partial payment being withheld until such waivers have been properly provided to the Manager.

§ 9.3.6 The Design-Builder shall include in every Subcontractor and major supplier agreement the requirements of waivers of liens prior to award of a subcontract or purchase order.

§ 9.3.7 Design-Builder must provide a monthly report to the Manager notifying Manager of any lien waivers that have not been provided.

§ 9.4 Certificates for Payment

The Owner-Manager shall, within seven days after receipt and approval of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner-Manager determines is properly due, and notify the Design-Builder in writing of the Owner's-Manager's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner-Manager may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner-Manager due to the Owner's-Manager's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner-Manager is unable to certify payment in the amount of the Application, the Owner-Manager will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner-Manager cannot agree on a revised amount, the Owner-Manager will promptly issue a Certificate for Payment for the amount that the Owner-Manager deems to be due and owing. The Owner-Manager may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner-Manager from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner-Manager is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner-Manager or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner-Manager withholds certification for payment under Section 9.5.1.3, the Owner-Manager may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner-Manager has issued a Certificate for Payment, the Owner-Manager shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven (7) days after receipt of payment from the Owner-Manager the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner-Manager will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner-Manager on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner-Manager has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner-Manager to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven (7) days, the Owner-Manager shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner-Manager shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner-Manager shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner-Manager with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner-Manager. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner-Manager does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven (7) additional days' written notice to the Owner-Manager, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner-Manager can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8. Manager in accordance with this Section 9.8. Substantial Completion of the Work shall mean the Work has progressed to the point that the Manager can beneficially occupy, the Work complies with the intent of the Contract Documents and the Manager is able to obtain a Certificate of Occupancy from the local governmental authority. The determination of Substantial Completion shall be made by the Manager based in part on the ability of the Manager to obtain a Certificate of Occupancy.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner-Manager agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner-Manager a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner-Manager shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's-Manager's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner-Manager can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner-Manager. In such case, the Design-Builder shall then submit a request for another inspection by the Owner-Manager to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner-Manager and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's-Manager's signature a Certificate of Substantial Completion that shall, upon the Owner's-Manager's signature, establish the date of Substantial Completion; establish responsibilities of the Owner-Manager and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner-Manager for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's-Manager's acceptance, and consent of surety, if any, the Owner-Manager shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents. The Manager reserves the right to withhold a value of up to three hundred percent (300%) of the cost of completing the Work that is incomplete or not in accordance with the requirements of the Contract Documents. The payment of retainage may also be adjusted by the Manager as necessary due to any outstanding lien, demand, security interest, encumbrance or Claim relating to the Project.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner-Manager may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner-Manager and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner-Manager as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage

of the progress of the Work shall be determined by written agreement between the Owner-Manager and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner-Manager and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner-Manager will promptly make such inspection. When the Owner-Manager finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner-Manager will, subject to Section 9.10.2, promptly issue a final Certificate for Payment. All warranties and guaranties required under or pursuant to the Contract Documents shall be assembled and delivered by the Design-Builder as part of the final application for payment. The Final Certificate for Payment will not be issued until all warranties and guaranties have been received and accepted by the Manager.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner-Manager (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner-Manager or the Owner's-Manager's property might be responsible or encumbered, (less amounts withheld by Owner-Manager) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner-Manager, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner, by the Manager, (8) a certificate executed by Design-Builder stating that all other terms of the Agreement have been satisfied and (9) receipt of a certificate of occupancy (or equivalent) and security accreditation from the applicable governmental authority has occurred and Manager's receipt of Final inspection and approval of the Work by all authorities having jurisdiction over the Work. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner-Manager, the Design-Builder may furnish a bond satisfactory to the Owner-Manager to indemnify the Owner-Manager against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner-Manager all money that the Owner-Manager may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees. If a Subcontractor refuses to furnish a release or waiver required by the Manager, the Design-Builder may furnish a bond satisfactory to the Manager to indemnify the Manager against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Manager all money that the Manager may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner-Manager shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner-Manager prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from Intentionally deleted.

- ~~.1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled; intentionally deleted.~~
- ~~.2 failure of the Work to comply with the requirements of the Design-Build Documents; or intentionally deleted.~~
- ~~.3 terms of special warranties required by the Design-Build Documents; intentionally deleted.~~

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

Design-Builder shall notify the Manager, in writing, upon final completion of the Work. The Project shall be considered completed when the Manager can fully occupy and use the Work for its intended purpose, and the Work is in full compliance with the Contract Documents. Once the Work has been inspected and accepted by the Manager, and all conditions of final payment are met, the Design-Builder shall be entitled to final payment.

Design-Builder agrees to maintain a lien-free Project for the benefit of the Manager. Design-Builder shall take all action necessary to obtain the prompt discharge of any lien or claim, including a Verified Statement of Claim, filed against the Manager or Project. If any lien or claim is filed against the Manager or Project, and the Design-Builder has been paid pursuant to the Agreement for that portion of the Work to which the lien or claim relates, then the Design-Builder shall promptly, but in no event more than fifteen (15) days after request and at its own cost, obtain the discharge and full release of the lien or claim by providing payment or filing a surety bond sufficient to discharge said lien or claim. If Design-Builder fails to take the action required by this Agreement to discharge a lien or claim, the Manager shall have the right to pay all sums necessary to obtain such a discharge and release, and the Design-Builder shall be responsible to the Manager for all costs and expenses incurred by the Manager in obtaining discharge and release of such lien or claim.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notify ~~owners-Managers~~ and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3,

caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner-Manager, or anyone directly or indirectly employed by the Owner-Manager, or by anyone for whose acts the Owner-Manager may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner-Manager.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 Injury or Damage to Person or Property. If the Owner-Manager or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, oral notice of injury or damage must be given to the other party within twenty-four (24) hours of occurrence and written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21-twenty-one (21) days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner-Manager in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner-Manager shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner-Manager shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner-Manager in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner-Manager. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner-Manager, the Manager shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner-Manager and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 ~~To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.~~Intentionally deleted.

§ 10.3.4 The Owner-Manager shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner by the Manager's Criteria and such materials and substances were properly transported, stored and used by the Design-Builder in accordance with applicable law and the Contract Documents. Nothing in this subparagraph shall

relieve or excuse the Design-Builder of its duties and obligations regarding the proper transportation, storage or use of hazardous materials and substances. The Manager shall be responsible for materials or substances required by the Owner's Manager's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner-Manager for the cost and expense the Owner-Manager incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's Manager's fault or negligence.

§ 10.3.6 ~~If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.~~ Intentionally deleted.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner-Manager may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner-Manager and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and without reimbursement and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner-Manager or a separate contractor in which event the Owner-Manager shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner-Manager or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner-Manager whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's ~~expense~~ expense and without reimbursement.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one (1) year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner-Manager to do so unless the Owner-Manager has previously given the Design-Builder a written acceptance of such condition. The Owner-Manager shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner-Manager fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner-Manager waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period ~~fourteen (14) days~~ after receipt of notice from the ~~Owner, the Owner-Manager, the Manager~~ Owner-Manager, the Manager may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year or extended period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this ~~Section 11.2.~~ Section 11.2, but only as to the Work which was corrected.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the ~~Owner-Manager.~~

§ 11.2.4 The Design-Builder shall bear the ~~cost-cost, without reimbursement~~ of correcting destroyed or damaged construction of the ~~Owner-Manager~~ or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the ~~Owner-Manager~~ prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the ~~Owner-Manager~~ may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 ~~Drawings, specifications, The Design-Builder may retain copies of its work product and may reuse individual details in subsequent work. The Manager may reuse any of the Instruments of Service created by the Design-Builder for the Project on any addition or modification to this Project, or for any other project, including new projects, as the Manager desires without permission of or compensation to the Design-Builder. Any unilateral use by the Manager of the Instruments of Service for completing, using, maintaining, adding to or altering the Project or facilities shall be at the Manager's sole risk and without liability to the Design-Builder or the Design-Builder's consultants; provided however that if the Manager's unilateral use occurs for completing, using or maintaining the Project as a result of the Design-Builder's breach of this Agreement, nothing in this article shall be deemed to relieve the Design-Builder of liability for its own acts or omissions or breach of this Agreement. Designs, drawings, specifications, details, models, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights, and all other work products of the Design-Builder are Instruments of Service whether or not the Project is completed, and are the property of the Manager along with all copyrights therein. The Manager is entitled to the possession of all such work products specifically developed for the Project upon completion of the Project, termination of this Agreement, or upon the Manager's request, whichever occurs first and upon payment in full of all amounts due to the Design-Builder under this Agreement.~~ Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 ~~The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.~~ Intentionally deleted.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the ~~Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially-Manager ownership of the Instruments of Service provided that the Manager~~ performs its obligations, including prompt payment of all sums

when due, under the Design-Build Documents. ~~The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.~~

~~§ 12.3.1 The Design Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design Builder to satisfy its obligations to the Owner under this Article 12. The Design Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design Builder's Architect, Consultants, or Contractors terminate their agreements with the Design Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.~~ Intentionally deleted.

~~§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner~~ Manager alters the Instruments of Service, the Manager releases the Design-Build, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such ~~uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.~~ uses

ARTICLE 13 TERMINATION OR SUSPENSION

~~§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment~~ § 13.1 See Sections 12, 13 and 14 of Exhibit C (General Conditions)

~~§ 13.1.1 If the Owner fails to make payments to the Design Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design Builder's option, cause for suspension of performance of services under this Agreement. If the Design Builder elects to suspend the Work, the Design Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design Builder's Work. The Design Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~ Intentionally Deleted.

~~§ 13.1.2 If the Owner suspends the Project, the Design Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design Builder shall be compensated for expenses incurred in the interruption and resumption of the Design Builder's Work. The Design Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.~~ Intentionally Deleted.

~~§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design Builder, the Design Builder may terminate this Agreement by giving not less than seven days' written notice.~~ Intentionally Deleted.

~~§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.~~ Intentionally Deleted.

~~§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design Builder for the Owner's convenience and without cause.~~ Intentionally Deleted.

§ 13.1.6 ~~In the event of termination not the fault of the Design Builder, the Design Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design Builder is not otherwise compensated. In no event shall the Design Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.~~Intentionally Deleted.

~~§ 13.2 Termination or Suspension Following Execution of the Design Build Amendment~~**§ 13.1.7** Intentionally Deleted.

~~§ 13.2.1 Termination by the Design Builder~~

~~§ 13.2.1.1 The Design Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design Builder, for any of the following reasons:~~**§ 13.2** Intentionally Deleted.

~~.1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;~~**§ 13.2.1** Intentionally Deleted.

~~.2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;~~**§ 13.2.1.1** Intentionally Deleted.

~~.3 Because the Owner has not issued a Certificate for Payment and has not notified the Design Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design Build Documents; or~~

~~.4 The Owner has failed to furnish to the Design Builder promptly, upon the Design Builder's request, reasonable evidence as required by Section 7.2.7.~~

~~§ 13.2.1.2 The Design Builder may terminate the Contract if, through no act or fault of the Design Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365 day period, whichever is less.~~**§ 13.2.1.2** Intentionally Deleted.

~~§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.~~Intentionally Deleted.

~~§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design Builder or any other persons or entities performing portions of the Work under contract with the Design Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design Build Documents with respect to matters important to the progress of the Work, the Design Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.~~Intentionally Deleted.

~~§ 13.2.2 Termination by the Owner For Cause~~**§ 13.2.2** Intentionally Deleted.

~~§ 13.2.2.1 The Owner may terminate the Contract if the Design Builder~~Intentionally Deleted.

~~.1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;~~

~~.2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;~~

~~.3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design Builder;~~

~~.4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or~~

~~.5 is otherwise guilty of substantial breach of a provision of the Design Build Documents.~~

~~§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design Builder and the Design Builder's surety, if any, seven days' written notice, terminate employment of the Design Builder and may, subject to any prior rights of the surety:~~

~~.1 — Exclude the Design Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design Builder;~~
~~.2 — Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and~~
~~.3 — Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design Builder, the Owner shall furnish to the Design Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.~~§ 13.2.2.2 Intentionally Deleted.

~~§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design Builder shall not be entitled to receive further payment until the Work is finished.~~Intentionally Deleted.

~~§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design Builder. If such costs and damages exceed the unpaid balance, the Design Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.~~Intentionally Deleted.

~~§ 13.2.3 Suspension by the Owner for Convenience~~§ 13.2.3 Intentionally Deleted.

~~§ 13.2.3.1 The Owner may, without cause, order the Design Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.~~Intentionally Deleted.

~~§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent~~Intentionally Deleted.

~~.1 — that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design Builder is responsible; or~~

~~.2 — that an equitable adjustment is made or denied under another provision of the Contract.~~

~~§ 13.2.4 Termination by the Owner for Convenience~~§ 13.2.4 Intentionally Deleted.

~~§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.~~Intentionally Deleted.

~~§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design Builder shall~~Intentionally Deleted.

~~.1 — cease operations as directed by the Owner in the notice;~~§ 13.2.4.3 Intentionally Deleted.

~~.2 — take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,~~

~~.3 — except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.~~§ 13.2.4.4 Intentionally Deleted.

~~§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.~~§ 13.2.4.5 Intentionally Deleted.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

~~§ 14.1 Claims~~§ 14.1 Claims, Also See Sections 11 and 15 of General Conditions (Exhibit C)

§ 14.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner-Manager and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 Time Limits on Claims. The Owner-Manager and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than ~~10~~ten (10) years after the date of Substantial Completion of the Work. The Owner-Manager and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner-Manager or Design-Builder must be initiated by written notice to the other party within 21-twenty-one (21) days after occurrence of the event giving rise to such Claim or within 21-twenty-one (21) days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner-Manager or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner-Manager shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary. If the Design-Builder wishes to make claim of an increase in the Contract Time, the Design-Builder shall give the Manager written notice thereof within fifteen (15) days after occurrence of the event giving rise to such claim.

§ 14.1.6.2 Weather delays which are normal and expected for the region and for the period of time must be included within the Construction Schedule. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner-Manager waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver ~~includes~~includes:

- .1 damages incurred by the Owner-Manager for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner-Manager and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 thirty (30) days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner-Manager shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner-Manager.** If the Owner-Manager initiates a Claim, the Design-Builder shall provide a written response to Owner-Manager within ten (10) days after receipt of the notice required under Section

14.1.3.1. Thereafter, the Owner-Manager shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 Claims Initiated by the Design-Builder. If the Design-Builder initiates a Claim, the Owner-Manager will take one or more of the following actions within ten (10) days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner-Manager lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner-Manager may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner-Manager in rendering a decision. The retention of such persons shall be at the Owner's-Manager's expense.

§ 14.2.4 If the Owner-Manager requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten (10) days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner-Manager when the response or supporting data will be furnished or (3) advise the Owner-Manager that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner-Manager will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's-Manager's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30-thirty (30) days from the date of an initial decision, demand in writing that the other party file for mediation within 60-sixty (60) days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner-Manager may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner-Manager may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60-sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The [Owner-Manager](#) and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the [Owner-Manager](#) and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The [Owner-Manager](#) and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The [Owner-Manager](#) may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the [Owner's-Manager's](#) rights and obligations under the

Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner-Manager requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner-Manager shall submit the proposed language of such certificates for review at least 14-fourteen (14) days prior to the requested dates of execution. If the Owner-Manager requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14-fourteen (14) days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner-Manager or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner-Manager, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner-Manager timely notice of when and where tests and inspections are to be made so that the Owner-Manager may be present for such procedures. The Owner-Manager shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner-Manager from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner-Manager determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner-Manager will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner-Manager, and the Design-Builder shall give timely notice to the Owner-Manager of when and where tests and inspections are to be made so that the Owner-Manager may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's Manager's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner-Manager.

§ 15.5.5 If the Owner-Manager is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner-Manager will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner-Manager or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1. Design-Builder acknowledges that in order to perform the services or provide the supplies and/or materials required herein, Manager may provide to Design-Builder or Design-Builder and Design-Builder's employees and personnel may become exposed to certain confidential information. The Design-Builder warrants and represents that the Design-Builder shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the project, except: (1) with the prior written consent of the Manager, (2) information that was in the public domain prior to the date of this Agreement, (3) information which becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Design-Builder, or (4) as may be required to perform the Work by any applicable law.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ 15.8.3 It is understood and agreed that all Contract Documents, including all drawings, specifications, details, designs reports, change orders, schedules, spreadsheets, logs, test results, invoices and records, including electronic records and computer data, prepared by the Design-Builder and its Subcontractors or consultants pursuant to this Agreement are the property of the Manager, including all copyrights thereto. Design-Builder shall obtain grants from its Subcontractors and consultants consistent with this Agreement. The Manager shall have the right to possess all such documents, drawings and electronic records as described above.

§ 15.8.4 Severability

In the event any one or more of the provision contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or non-enforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement and this Agreement shall be enforced to the fullest extent permitted by law. The Parties agree to renegotiate in good faith those provisions of the Agreement invalidated so that an appropriate agreement may be maintained between the Parties.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

- .1 AIA Document A141™–2014, Standard Form of Agreement Between ~~Owner-Manager~~ and Design-Builder
- .2 AIA Document A141™–2014, Exhibit A, Design-Build Amendment, if ~~executed~~executed, and
- .3 AIA Document A141™–2014, Exhibit B, Insurance and ~~Bonds~~Bonds;
- .4 ~~AIA Document A141™–2014, Exhibit C, Sustainable Projects, if completed~~Intentionally deleted;
- .5 ~~AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed,~~ or the following:

« »

- .6 Other:

«Exhibit C – General Conditions
Exhibit D – Special Conditions
Attachment A – Design and Preconstruction Services Fee
Attachment A-1 – Construction Cost Summary
Attachment B – Preconstruction Costs and General Conditions
Attachment C – Design Services Rates
Attachment C-1 – Preconstruction & Construction Rates
Attachment D – Design Staffing Allocation
Attachment D-1 – Preconstruction and Construction Staffing Allocation
Attachment E – Responsibility Matrices
Attachment F – Project Documents»

§ 16.2 This document constitutes the Agreement between the Parties with respect to the subject matter hereof, and is a complete and exclusive statement of the terms of their agreement, and no terms, conditions, understandings or agreement purporting to amend, modify, vary or waive the terms of this Agreement shall be binding unless made in writing and signed by an authorized representative of each Party.

§ 16.3 This Agreement, along with Exhibits and Attachments, and the other Contract Documents, as defined herein, reflect the entire Agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written statements, understandings or correspondence, if any, with respect thereto.

§ 16.4 This Agreement supersedes all prior written and oral agreements regarding the subject matter hereof. In the event of a conflict between the terms and conditions of this document and the terms and conditions or any document or Exhibit attached hereto or referenced herein, the terms and conditions of this document shall govern and control, with the exception of Exhibit D (Special Conditions), which takes precedence.

§ 16.5 This Agreement shall be interpreted and construed according to its fair meaning, without consideration as to which party drafted it.

This Agreement entered into as of the day and year first written above.

OWNER-MANAGER (Signature)

«TBD»«TBD»

(Printed name and title)

DESIGN-BUILDER (Signature)

«TBD»«TBD»

(Printed name and title)

APPENDIX C

AIA Document A141 – 2014

EXHIBIT A: DESIGN-BUILD AMENDMENT

EXHIBIT B: INSURANCE AND BONDS

EXHIBIT C: GENERAL CONDITIONS

EXHIBIT D: SPECIAL CONDITIONS

DO NOT EXECUTE

DRAFT AIA® Document A141® – 2014

Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141™–2014, Standard Form of Agreement Between Owner-Manager and Design-Builder dated the «TBD» day of «TBD» in the year «2023» (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

«Ballroom Roof Repairs»
«Hawaii Convention Center ("HCC")
1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

THE OWNER-MANAGER:

(Name, legal status and address)

«AEG Management HCC, LLC a Delaware Limited Liability Company»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»

THE DESIGN-BUILDER:

(Name, legal status and address)

«TBD»« »
« »

The Owner-Manager and Design-Builder hereby amend the Agreement as follows.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner-Manager shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner-Manager paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

[«X»] Stipulated Sum, in accordance with Section A.1.2 below

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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[<>] Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below

[<>] Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be <TBD> (\$ <TBD>), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner-Manager.
(State the numbers or other identification of accepted alternates. If the Owner-Manager is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

<TBD>

The Stipulated Sum includes the Design-Builder's Fee of TBD Percent (TBD%).

The Design-Builder's Fee will be the same for changes in the Work.

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)

§ A.1.3 Cost of the Work Plus Design-Builder's Fee

Intentionally deleted.

~~§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.3.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)~~

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

Intentionally deleted.

~~§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.~~

~~§ A.1.4.2 The Design-Builder's Fee:~~

~~(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)~~

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed \$ (), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder's Fee, and other items that comprise the Guaranteed Maximum Price. *(Provide information below or reference an attachment.)*

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

§ A.1.5 Payments, Also See Sections 16, 17, 18 and 27 of Exhibit C (General Conditions)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner-Manager by the Design-Builder, the Owner-Manager shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows: month.

«TBD»

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the «1st» day of the month, the Owner-Manager shall make payment of the certified and approved amount to the Design-Builder not later than the «1st» day of the «following» month. If an Application for Payment is received by the Owner-Manager after the application date fixed above, payment shall be made by the Owner-Manager not later than «—» «thirty» («30») days after the Owner receives Manager approves the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner-Manager to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the

various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner-Manager may require. This schedule of values, unless objected to by the Owner-Manager, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner-Manager shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner-Manager, will be performed by the Owner's Manager's auditors acting in the sole interest of the Owner-Manager.

§ A.1.5.1.7 Except with the Owner's Manager's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ~~percent~~ (~~«five»~~ percent (5%)) on the Work. Pending final determination of cost to the Owner-Manager of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner-Manager, suitably stored off the site at a location agreed upon in writing), less retainage of ~~percent~~ (~~«five»~~ percent (5%));
- .3 Subtract the aggregate of previous payments made by the Owner-Manager; and
- .4 Subtract amounts, if any, the Owner-Manager has withheld or nullified, as provided in Section 9.5 of the Agreement.
- .5 Section 103-32.1(d)(3), HRS, allows the Design-Builder to withhold from amounts due its Subcontractors, only the same percentage of retainage as that of the Design-Builder, and only if its Subcontractors have provided valid performance and payment bonds or other bond or collateral acceptable to the Design-Builder. Section 103-32.1(e), HRS, allows the Design-Builder or Subcontractor to negotiate with, and retain from its respective Subcontractors, a different retainage percentage which cannot exceed ten percent (10%). All amounts retained shall be held by the procurement officer. Therefore no additional amounts are to be retained by the State unless: (1) the Design-Builder's progress is not satisfactory, in which case the State may continue to withhold up to five percent (5%) of the amount due the Contract, after fifty percent (50%) of the Contract is completed; or (2) there is a subcontract in which the Design-Builder or Subcontractor has negotiated a retainage in excess of the five percent (5%.) but no more than ten percent (10%).

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner-Manager shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

«At the Manager's sole discretion, if the Work is proceeding to the satisfaction of the Manager, retainage may be reduced or discontinued on a case-by-case basis based on the quality and level of completeness of a Subcontractor's Work.»

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

Intentionally deleted.

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design Builder through the end of the period covered by the Application for Payment and for which Design Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design Builder's Fee, less retainage of \square percent (\square %). The Design Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of \square percent (\square %) from that portion of the Work that the Design Builder self performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

Intentionally deleted.

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design Builder on account of that portion of the Work for which the Design Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.

- ~~2. Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;~~
- ~~3. Add the Design Builder's Fee, less retainage of ■ percent (■ %). The Design Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same ratio to that fixed sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;~~
- ~~4. Subtract retainage of ■ percent (■ %) from that portion of the Work that the Design Builder self performs;~~
- ~~5. Subtract the aggregate of previous payments made by the Owner;~~
- ~~6. Subtract the shortfall, if any, indicated by the Design Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and~~
- ~~7. Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.~~

~~§ A.1.5.4.3 The Owner and Design Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design Builder shall execute agreements in accordance with those terms.~~

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner Manager to the Design-Builder not later than ~~30~~thirty (30) days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's Manager's auditors will review and report in writing on the Design-Builder's final accounting within ~~30~~thirty (30) days after the Design-Builder delivers the final accounting to the Owner Manager. Based upon the Cost of the Work the Owner's Manager's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner Manager will, within seven (7) days after receipt of the written report of the Owner's Manager's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than ~~(■)~~«TBD» («TBD» days from the date of this Amendment, or as follows:

(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

«TBD»

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.

(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the ~~Work~~ Work. See also Section 9 of General Conditions (Section C)

«TBD»

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
TBD			

§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

[«TBD»](#)

Section	Title	Date	Pages

§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

[«TBD»](#)

Number	Title	Date

§ A.3.1.4 The Sustainability Plan, if any:

(If the [Owner-Manager](#) identified a Sustainable Objective in the [Owner's-Manager's](#) Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the [Owner's-Manager's](#) and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages

Other identifying information:

[«TBD»](#)

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

[«TBD»](#)

.2 Contingencies

[«TBD»](#)

§ A.3.1.6 Design-Builder's assumptions and clarifications:

[«TBD»](#)

§ A.3.1.7 Deviations from the [Owner's-Manager's](#) Criteria as adjusted by a Modification:

<< >>

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the [Owner-Manager](#) for review, indicate any such submissions below:

<< >>

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

.1 Superintendent

[«TBD»](#)

.2 Project Manager

[«TBD»](#)

.3 Others

<< >>

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

[«TBD»](#)

ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the [Owner's prior approval, at off-site workshops](#). [Manager's prior approval, at off-site workshops in accordance with the approved hourly billing rates attached hereto.](#)

§ A.5.1.1.2 With the [Owner's-Manager's](#) prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel [when stationed at the site, in accordance with the approved hourly billing rates attached hereto, which include all fringe benefits and labor burden. With the prior approval of the Manager, certain accounting or estimating personnel assigned to the Project may be reimbursed for all or part of their time when stationed at the Design/Builder's principal office, if included in the Contract Sum. Under no circumstances shall salaried employees be compensated for overtime without the Manager's prior written approval.](#)

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the [Work. Work in accordance with the approved hourly billing rates attached hereto.](#)

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary

benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under ~~Section A.5.1.1~~ Section A.5.1.1, and are attached hereto.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or ~~supplier, with the Owner's prior approval~~ supplier shall not be reimbursable as a Cost of the Work and shall not be allocated to or included within the wages, salaries or hourly billing rates attached hereto. Bonuses, profit sharing and other discretionary incentive compensation must be included in the Design/Builder's Fee, if provided.

§ A.5.1.2 Contract Costs. Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 Costs of Materials and Equipment Incorporated in the Completed Construction

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's Manager's property at the completion of the Work or, at the Owner's Manager's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner Manager as a deduction from the Cost of the Work.

§ A.5.1.4 Costs of Other Materials and Equipment, Temporary Facilities and Related Items

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's Manager's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's Manager's prior approval.

§ A.5.1.5 Miscellaneous Costs

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's Manager's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the [Owner's Manager's](#) consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the [Owner's Manager's](#) prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the [Owner's Manager's](#) prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the [Owner-Manager](#) and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the [Owner's Manager's](#) prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the [Owner-Manager](#).

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common [ownership-Managership](#) or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the [Owner-Manager](#) of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the [Owner-Manager](#), after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the [Owner-Manager](#)

fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's project executives or personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;
- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner-Manager, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner-Manager if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner-Manager, or (2) the Owner-Manager has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner-Manager, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner-Manager in accordance with Section A.5.3.1 shall be credited to the Owner-Manager as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner-Manager by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner-Manager requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner-Manager by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner-Manager.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner-Manager. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner-Manager to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner-Manager receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner-Manager upon the Owner's-Manager's written request.

§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner-Manager. The Owner-Manager and the Owner's-Manager's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete

documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner-Manager to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner-Manager; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's-Manager's interests.

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER-MANAGER (Signature)

«TBD»«TBD»

(Printed name and title)

DESIGN-BUILDER (Signature)

«TBD»«TBD»

(Printed name and title)

DRAFT AIA® Document A141® – 2014

Exhibit B

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

«Ballroom Roof Repairs»
«Hawaii Convention Center ("HCC")
1801 Kalakaua Avenue
~~THE OWNER~~ Honolulu, Hawaii 96815»

THE MANAGER:
(Name, legal status and address)

«AEG Management HCC, LLC a Delaware Limited Liability Company»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»

THE DESIGN-BUILDER:
(Name, legal status and address)

«TBD»« »
« »

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner-Manager and the Design-Builder (hereinafter, the Agreement), dated the «TBD» day of «TBD» in the year «2023».
(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S-MANAGER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

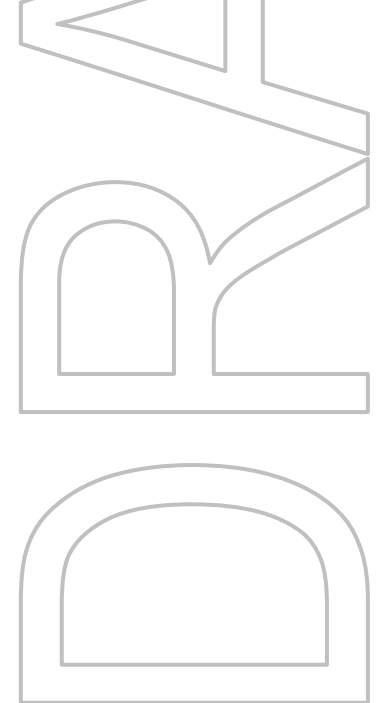
The Owner-Manager and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.



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(If the Design-Builder is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.) at its own expense, insuring the Design-Builder, its employees, agents and designees, until termination of this Agreement and for such additional periods as may be specified herein with insurance companies admitted or authorized to do business in the State where the Project is located as required by law. The Design-Builder shall cause its consultants, subconsultants and agents to maintain equivalent insurance coverages for the services provided by such third party.

«TBD»

§ B.2.1.1 Commercial General Liability with policy limits of not less than ~~(\$) for each occurrence and (\$) «two million dollars»~~ (\$ «2,000,000») for each occurrence, five million dollars (\$5,000,000) general aggregate and «five million dollars» (\$ «5,000,000») in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

Commercial General Liability insurance on a per occurrence basis, shall include: (i) Broad form property damage; (ii) Contractual liability insurance, as part of the Commercial General Liability policy, insuring the Design-Builder's liabilities assumed under this Contract, including indemnification obligations under Section 3.1.14 of the AIA A141-2014; and (iii) personal injury and advertising injury.

Products and Completed Operations with policy limits of not less than «two million dollars» (\$«2,000,000») for each occurrence and «five million dollars» (\$«5,000,000») in the aggregate for products and complete operations.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than ~~(\$) per claim and (\$) in the aggregate «one million dollars» (\$ «1,000,000») per accident~~ for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, vehicles, along with any other statutorily required automobile coverage. Automobile Liability insurance shall include coverage for automobile contractual liability.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in ~~the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2, not less than five million dollars (\$5,000,000) and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.~~

§ B.2.1.4 Workers' Compensation at statutory ~~limits-~~ limits and requirements of the State where the Project.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

« Employers' Liability with policy limits not less than «one million dollars» (\$ «1,000,000») each accident, «one million dollars» (\$ «1,000,000») each employee, and «two million dollars» (\$ «2,000,000») policy limit.

Employers' Liability insurance shall also include a Waiver of Subrogation in favor of Manager, the Hawai'i Convention Center, the Hawai'i Tourism Authority, Anschutz Entertainment Group, Inc. and the State of Hawai'i, and each of its and their respective boards, commissions, agents, Managers, members, shareholders, directors, officers, servants, employees, subsidiaries, and affiliates (hereinafter referred to as "Company Indemnitees"), unless not permitted by applicable law. The Workers' Compensation and Employer's Liability policy shall provide a waiver of subrogation in favor of Manager and any other entity or individual required by the Contract. Design Builder waives all rights against Manager, and their respective affiliates, agents, officers, directors and employees to the extent of any damages covered by such policy obtained by Design-Builder pursuant to this paragraph.»

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ~~(\$) per claim and (\$) «two million dollars» (\$ «2,000,000») per claim and «two million dollars» (\$ «2,000,000»)~~ in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than ~~(\$) per claim and (\$) «one million dollars» (\$ «1,000,000») per claim and «one million dollars» (\$ «1,000,000»)~~ in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than ~~(\$) per claim and (\$) «two million dollars» (\$ «2,000,000») per claim and «two million dollars» (\$ «2,000,000»)~~ in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner-Manager of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 Additional Insured Obligations. ~~The Owner~~ To the fullest extent permitted by law, the Manager and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution ~~Liability~~ Liability for claims caused in whole or in part by the Design-Builder's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the ~~Owner's-Manager's~~ insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 Certificates of Insurance. The Design-Builder shall provide certificates of insurance acceptable to the Owner-Manager evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon ~~Owner's written request. Manager's written request. Upon Manager's request, true and correct copies of the insurance policies along with original copies of the amendatory riders to any such policies for Manager's approval. Each and every policy shall provide, by endorsement or policy provision, that the insurer will not terminate coverage or fail to be renewed without first mailing written notice of such action at least ten (10) days prior for non-payment of premium or forty-five (45) days for any other reason prior to such termination or lapse to the Manager.~~ An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner-Manager and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.1.11 The policies shall be written on an occurrence basis (or in the case of personal injury and advertising injury coverage, an offense basis). Carriers furnishing such insurance shall be required to waive all rights of subrogation against Manager, its officers, agents, employees and other contractors, consultants, subconsultants and Subcontractors.

Design-Builder shall orally report promptly to Manager and promptly confirm to Manager in writing, upon Design-Builder becoming aware of any injury, loss, or damage incurred by Design-Builder or its contractors, consultants, Subcontractors, agents and assignees in connection with the Project, or upon Design-Builder's receipt of such claim by a third party, or upon Design-Builder becoming aware of any occurrence that Design-Builder believes may give rise to such claim.

Design-Builder shall include Manager, and any subsequent Manager of or lender to the Project (collectively referred to as the "Manager Related Parties") as additional insureds on a primary and noncontributory basis on the Commercial General Liability policy, and on the Business Auto policy, and on all Umbrella policies (if any). If a separate policy is

obtained for Products/Completed Operations, Manager will also be named as an additional insured on it.

§ B.2.1.12 If the Design-Builder fails to furnish and maintain the insurance required by this Agreement, the Manager may purchase such insurance on behalf of the Design-Builder, and the Design-Builder shall pay the cost thereof to the Manager (or Manager shall be entitled to offset such costs from amounts due Design-Builder hereunder) and Design-Builder shall provide any information needed to obtain such insurance.

§ B.2.1.13 Consultant Insurance. Design-Builder shall cause each of its consultants of every tier to purchase and maintain insurance of the type specified above and to otherwise comply with the insurance requirements set forth above, except that Commercial General Liability insurance shall be at least Two Million Dollars (\$2,000,000) each occurrence and general aggregate, and Professional Liability Insurance shall be at least Two Million Dollars (\$2,000,000). When requested by Manager, Design-Builder shall furnish copies of certificates to Manager evidencing such coverage for each consultant of any tier. Nothing in this section shall limit Design-Builder's indemnification requirements to Manager under this Agreement.

§ B.2.1.14 Design-Builder shall and hereby does subordinate all of its lien rights and shall ensure that all of its consultants of every tier shall subordinate all of their lien rights, to the lien of the mortgage(s) relating to this Project held by any of Manager's lender(s) for the Project, their successors and assigns. Any consultants which refuse to so subordinate their lien rights must be specifically approved in advance and in writing by Manager. Design-Builder shall and Design-Builder shall ensure that all of its consultants of every tier shall, if requested by Manager, execute an agreement, in form and substance satisfactory to Manager, so subordinating lien rights to the interests of Project lender(s).

§ B.2.1.15 All of the insurance in this Article shall be subject to the following terms, conditions and endorsements.

§ B.2.1.15.1 Insurer. The insurance shall be purchased from a company with an "A-:IX" or better rating from A.M. Best Company, where said insurance company is both lawfully able to provide insurance in the State of Hawaii and that is satisfactory to the Manager.

§ B.2.1.15.2 Additional Insureds Endorsements. All insurance, except the workers compensation and professional liability insurance, shall include the Company Indemnitees as additional insureds under ISO Form CG 2010 and Form CG 2037 or their equivalents. These endorsements shall apply without regard to other provisions of this Agreement.

§ B.2.1.15.3 Primary Insurance. The commercial general liability insurance and the automobile liability insurance to be carried by the Design-Builder shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by the Manager regarding the Work under this Agreement.

§ B.2.1.15.4 Severability of Interest. The insurance shall include a severability of interest clause for all named insureds and additional insureds.

§ B.2.1.15.5 Duration. Coverage shall be maintained, without interruption, from the date of commencement of the Design-Builder's Services under this Agreement and shall continue for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. The insurance obligations shall survive the expiration or termination of this Agreement.

§ B.2.1.15.6 Notice of Cancellation, Etc. The Design-Builder's insurer shall give the Manager immediate written notice of any cancellation in accordance with the policy terms but shall provide at least ten (10) days' written notice for non-payment of premium. The Design-Builder shall be required to immediately notify Manager of any termination, of coverage or if its coverage no longer meets the requirements of this Agreement by registered or certified mail, return receipt requested.

§ B.2.1.15.7 Defense. The insurance obtained by the Design-Builder, except for professional liability and workers compensation insurance, shall provide that the insurer shall defend any suit against the additional insureds, even if such suit is allegedly or actually frivolous or fraudulent. Defense costs shall apply in excess of any per occurrence limit of liability and shall not reduce any aggregate limits of liability applying under the policies.

§ B.2.1.15.8 Delivery of Certificates and Policies. Original certificates of insurance and all requested endorsements, in a form acceptable to the Manager, must be filed with the Manager prior to commencement of the Design-Builder's Services. The Design-Builder's certificate of insurance shall be endorsed as follows: "The Company Indemnitees (as defined in Section B.2.1.5) are named as additional insureds for all insurance except the workers compensation and the professional liability insurance. This insurance is primary to and non-contributing with any and all insurance of the Company Indemnitees." The Certificate Holder box shall identify the name and address of the Manager listed on the first page of this Agreement. With respect to insurance coverage required to remain in force after final payment, the Design-Builder shall annually submit certificates of insurance evidencing continuation of such coverage. The Design-Builder shall submit copies of the policies within seven days following a request from the Manager.

§ B.2.1.15.9 Lapse in Insurance. Failure to maintain insurance shall constitute a material breach of this Agreement. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Manager receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Manager may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

§ B.2.1.15.10 Subcontractors. If the Design-Builder subcontracts a third-party sub-consultant to complete any portion of this Agreement, the Design-Builder shall ensure that the sub-consultant shall provide all necessary insurance and shall name the Company Indemnities and the Design-Builder listed as additional insureds. The Design-Builder shall provide such insurance documents to the Manager on behalf of sub-consultant.

§ B.2.1.15.11 Non-Waiver. PERMITTING THE DESIGN-BUILDER TO START WORK OR RELEASING ANY PAYMENT PRIOR TO COMPLIANCE WITH THESE REQUIREMENTS SHALL NOT CONSTITUTE A WAIVER THEREOF.

§ B.2.1.15.12 The Design-Builder and the Manager waive all rights of recovery against each other and the Company Indemnitees for any losses covered by insurance with the exception of the Professional Liability policy. The Design-Builder agrees to defend and indemnify the Indemnitees from all such subrogation claims.

§ B.2.1.16 Builders Risk Insurance. Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Design-Builder shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Manager, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Manager has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Manager shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.

§ B.2.1.16.1 The insurance required under Section B.2.1.16 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.

§ B.2.1.16.2 If the insurance required under Section B.2.1.16 requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

§ B.2.1.16.3 The insurance required under Section B.2.1.16 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.2.1.16.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.2.1.16 have consented to such partial occupancy or use by endorsement or otherwise. The Manager and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.2.1.17 Loss of Use Insurance. The Design-Builder shall purchase and maintain insurance to insure the Manager against loss of use of the Manager's property due to fire or other hazards, however caused.

§ B.2.2 Performance Bond and Payment Bond

The Manager shall have the right to require the Design-Builder to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in the Contract Documents on the date of execution of the Contract.

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
<u>Payment & Performance Bond</u>	<u>\$1,000,000.00</u>

The Manager shall be named as obligees on all bonds. Bonds to be provided by the Design-Builder, Subcontractors, and sub-subcontractor(s) must be conditioned (1) that prompt payment shall be made for all amounts lawfully due to all contractors, subcontractors, and persons or entities furnishing labor or materials used in the prosecution of the Work on any phase of the Project; and (2) as guarantee of the obligation to complete the Project as provided in this Agreement. The dollar amount of such bonds shall be modified, as needed, to reflect any approved change orders that modify the total value of the Project or part of the Project. Failure to comply with the requirements of this section shall be legal grounds under this Agreement for Work to be ordered to cease or to be restricted, as deemed appropriate by the Manager, until compliance is achieved, and any unpaid claims are resolved to the reasonable satisfaction of the Manager.

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 — OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

ARTICLE B.3 MANAGER'S INSURANCE

§ B.3.1 Manager's Liability Insurance

The Manager shall be responsible for purchasing and maintaining the Manager's usual liability insurance.

§ B.3.2 Property Insurance

§ B.3.2.1 ~~Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall~~

be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement. Intentionally deleted.

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

~~§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.~~

~~§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.~~

~~§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds. Intentionally deleted.~~

~~§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto. Intentionally deleted.~~

~~§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement. Intentionally deleted.~~

~~§ B.3.2.5 If during the Project construction period the Owner-Manager insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner-Manager shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.~~

~~§ B.3.2.6 Before an exposure to loss may occur, the Owner-Manager shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner-Manager shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this~~

Article B.3. The Owner-Manager shall provide such written notice within five (5) business days of the date the Owner-Manager is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 Waivers of Subrogation. The Owner-Manager and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and ~~subcontractors, Subcontractors,~~ agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their ~~subcontractors, Subcontractors,~~ sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner-Manager as fiduciary. The Owner-Manager or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the ~~subcontractors, Subcontractors,~~ sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's Manager's property insurance shall be adjusted by the Owner-Manager as fiduciary and made payable to the Owner-Manager as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and ~~subcontractors Subcontractors~~ in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner-Manager as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's Manager's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner-Manager shall deposit in a separate account proceeds so received, which the Owner-Manager shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner-Manager and Design-Builder. If after such loss no other special agreement is made and unless the Owner-Manager terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner-Manager as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's Manager's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner-Manager and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner-Manager and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner-Manager as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

«TBD»

GENERAL CONDITIONS

Table of Contents

Page(s)

1.	Coordination of Services by the STATE.....	2
2.	Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.....	2
3.	Personnel Requirements	3
4.	Nondiscrimination	3
5.	Conflicts of Interest	3
6.	Subcontracts and Assignments	3
7.	Indemnification and Defense.....	4
8.	Cost of Litigation.....	4
9.	Liquidated Damages	4
10.	STATE'S Right of Offset.....	4
11.	Disputes	4
12.	Suspension of Contract.....	4
13.	Termination for Default.....	5
14.	Termination for Convenience.....	6
15.	Claims Based on the Agency Procurement Officer's Actions or Omissions.....	8
16.	Costs and Expenses	8
17.	Payment Procedures; Final Payment; Tax Clearance	9
18.	Federal Funds	9
19.	Modifications of Contract.....	9
20.	Change Order.....	10
21.	Price Adjustment	11
22.	Variation in Quantity for Definite Quantity Contracts	11
23.	Changes in Cost-Reimbursement Contract.....	11
24.	Confidentiality of Material	12
25.	Publicity.....	12
26.	Ownership Rights and Copyright	12
27.	Liens and Warranties	12
28.	Audit of Books and Records of the CONTRACTOR.....	13
29.	Cost or Pricing Data	13
30.	Audit of Cost or Pricing Data	13
31.	Records Retention.....	13
32.	Antitrust Claims.....	13
33.	Patented Articles.....	13
34.	Governing Law	14
35.	Compliance with Laws	14
36.	Conflict between General Conditions and Procurement Rules	14
37.	Entire Contract.....	14
38.	Severability.....	14
39.	Waiver	14
40.	Pollution Control	14
41.	Campaign Contributions.....	14
42.	Confidentiality of Personal Information.....	14

GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:
 - (1) The Assignee assumes all of the CONTRACTOR'S obligations;
 - (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
 - (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.
- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
- 7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 - 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 - 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 - 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 - 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 - 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
- (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
- (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
- (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
- (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.

- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
 - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

c. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

SPECIAL CONDITIONS

The following Special Conditions modify, change, delete from, and add to, the State of Hawaii's General Conditions which are included as part of the Contract Documents as Appendix E.

1. Changes to Terminology: Except as provided herein, the Terms throughout the entire document shall be changed and interpreted as follows:

“STATE” shall mean either the State of Hawaii or AEG Management HCC, LLC (“AEG”) as a contractor for the state.

“HOPA” shall mean the “Contracting Officer” as defined in the Request for Proposals (“RFP”).

“CPO” shall mean the “Contracting Officer” as defined in the RFP.

“Agency procurement officer” shall mean the “Contracting Officer” as defined in the RFP.

2. Delete Paragraph 6.d. in its entirety.
3. The first sentence of Paragraph 7 shall be changed to read: “The CONTRACTOR shall defend, indemnify, and hold harmless AEG Management Hawaii HCC, LLC, the Hawaii Tourism Authority (“HTA”), the State of Hawaii, and their respective officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys’ fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR’s employees, officers, agents, suppliers, or subcontractors under this Contract.”
4. Delete Paragraph 10 in its entirety.
5. Delete Paragraph 11 in its entirety.
6. The second sentence of Paragraph 13.c. shall be changed to read as follows: “If the parties fail to agree, the Contracting Officer shall set an amount subject to the CONTRACTOR’s legal rights.”
7. The first sentence of Paragraph 14.a. shall be changed to read as follows: “The Contracting Officer may, when the interests of AEG, HTA, and/or the State of Hawaii so require, terminate this Contract in whole or in part, for the convenience of the STATE.”
8. Delete Paragraph 17.b. in its entirety.
9. Add the following language to the beginning of Paragraph 17.d.: “Notwithstanding final payment requirements set forth elsewhere in the Contract, final payment under this contract . . . “
10. Delete Paragraph 18 in its entirety.
11. Delete Paragraphs 19.g., 19.h., and 19.i. in their entirety.
12. Delete the phrase “and applicable sections of chapters 3-123 and 3-126, HAR.” at the end of Paragraph 21.a.(5).
13. Delete Paragraph 23 in its entirety.

14. The first sentence of Paragraph 25 shall be changed to read as follows: “The CONTRACTOR shall not refer to AEG, HTA, the State of Hawaii, or the Hawaii Convention Center, or any officer thereof, or any employees of the foregoing, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR’s brochures, advertisements, or other publicity of the CONTRACTOR.
15. The term “STATE” in Paragraph 33 shall mean “AEG, HTA, and the State of Hawaii” as those terms are defined herein.
16. The body of Paragraph 36, which is entitled “Conflict Between General Conditions and Procurement Rules” shall be changed to read as follows: “In the event of a conflict between the General Conditions and the STATE procurement rules (as set forth in Part III of chapter 103D, including the Hawaii Administrative Rules relating thereto), the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.”
17. The first sentence of Paragraph 37 shall be changed to read as follows: “The Contract documents identified and set forth in the Contract itself comprise all of the agreements, conditions, understandings, promises, warranties, and representations between AEG, HTA, the State of Hawaii and the CONTRACTOR relative to this Contract.

APPENDIX D

RATE CARD / PROPOSAL FORM

DUE WITH PROPOSAL SUBMISSION

APPENDIX E

HAWAII CONVENTION CENTER – HEALTH & SAFETY PROCEDURES

HAWAII CONVENTION CENTER
HEALTH & SAFETY PROCEDURES - CONTRACTOR POLICY

OVERVIEW:

Provide contractors of the Hawaii Convention Center ("HCC" or Facility) with the HCC/AEG Management HCC, LLC ("AEG") rules, regulations and requirements when working at the Facility.

POLICY:

The policy of HCC/AEG is to provide a safe and secure environment for our clients, guests, visitors, contractors and employees.

PROCEDURE:

All contractors and sub-contractors are expected to abide to all HCC/AEG policies as listed:

- I. Health, Safety and Environment
- II. Access to Facility
- III. Fire, Health, and Safety - General Rules
- IV. Equipment Safety
- V. Hazardous Works and Materials
- VI. Special Requirements
- VII. General Do's and Don'ts

I. HEALTH, SAFETY AND ENVIRONMENT

A. Compliance

The Contractor, their employees and agents will comply with all relevant statutory and HCC/AEG's regulations pertaining to health, safety and environmental protection.

The Contractor shall ensure that all materials and equipment used in the project, regardless of the owner, comply with all relevant regulations and statutory requirements of HCC/AEG, the Government, local and other authorities with jurisdiction for occupational safety and health. All equipment requiring certification by authorizing agencies will be certified before brought onto Facility premises.

The Contractor is required to present license/certification of specific individuals who will operate any of HCC's lift equipment, in accordance with applicable state and federal OSHA regulations and HCC Safety Policies.

The Contractor is required to ensure proper license/certification is current, lawful and held by any individual operating lift equipment not owned by HCC.

B. **Responsibilities**

The Contractor is wholly responsible for the safety and safe working practices of its employees and agents. The Contractor will ensure their staff is trained and certified, as applicable, on the equipment required for the job, safety precautions and safe working practices before the job commences. HCC/AEG has the right to request the Contractor to provide certification, licensing or credentialing that is required by government regulation.

The Contractor shall report to HCC/AEG (Security Department) any incident or accident occurring, which involves any employee or agent of the Contractor. In cases of injuries or non-injuries incidents judged to be serious by HCC/AEG, the Contractor will carry out a full investigation without additional cost to HCC/AEG. A detailed report is submitted to HCC/AEG within three (3) working days, stating events relating to the incident or accident: the primary and contributory causes, conclusions, and recommendations to prevent reoccurrence.

The Contractor affirms that it has a written safety policy which is comparable to the HCC/AEG Safety Policy. The written safety policy is acknowledged, supported, and endorsed by HCC/AEG management. The Contractor further affirms that its safety policy has been disseminated and Contractor Employees and agents have been trained and signed off as completed.

The Contractor's safety policy will include a description of the Contractor's safety organization, procedures, and methods of communication to and from its employees and agents.

Contractors, their subcontractors, suppliers, and delivery vendors to all have appropriate and active Insurance Certificates and personal Medical Coverage for all employees or representatives.

C. **Health and Safety Site Control**

The Contractor will permit HCC/AEG access to any equipment, personnel, materials, and records involved in any job on the work site at HCC/AEG to enable HCC/AEG to:

1. Ensure the Contractor complies with all provisions presented herewith.
2. Ensure the Contractor is carrying out its responsibility under its Safety Policy.
3. Ensure the Safety Policy of the Contractor complies with all provisions presented.
4. Conduct, if required, independent investigations into an incident arising out of/or in connection with the job performance.

D. **Violation of Health and Safety Regulation**

If the Contractor is performing the job in an unsafe manner, or if its equipment requires modification to meet statutory or HCC/AEG safety standards, **HCC/AEG reserves the right to immediately suspend all or part of the job.**

The suspension notice shall include reasons for HCC/AEG issuing such notice and will outline the steps required to be taken by the Contractor to rectify the hazard.

The Contractor shall be considered inoperable of its obligations under this situation until the unsafe working condition hazard is remedied to the satisfaction of HCC/AEG.

The refusal or inability of the Contractor to remedy any hazardous working practice or to perform the required modification to its equipment within seven (7) days shall constitute a breach of Contract. HCC/AEG may, in addition to and without prejudice to any other rights the Contractor may have, terminate the Contract in accordance with the Contract.

E. **Personal Protective Clothing and Equipment**

The Contractor, at its own expense, supplies all its employees or agents, adequate personal protective clothing and equipment that will satisfy accepted industry standards as advised by HCC/AEG. Such protective equipment is supplied and always maintained in good condition at the Contractor's expense. The equipment must be worn on all relevant occasions as required by law, notice, instruction and in good sense.

F. **Security Checks**

HCC/AEG reserves the right to require the Contractor and their employees or agents to produce acceptable evidence of identification, such as a driver's license or identification card or badge, to HCC/AEG for the purpose of entering any premises of HCC/AEG. The Contractor and their employees and agents shall consent to the searching of any package, toolbox, or suitcase in their possession.

Contractors and their staff unwilling to comply with such requirement will not be permitted entry into any premises of HCC/AEG and, consequently, HCC/AEG will not be liable for any cost arising directly or un-directly out of such circumstances. The Contractor and their employees or agents shall also comply with such request prior to leaving the premises of HCC/AEG.

II. **ACCESS TO THE FACILITY**

A. **Access Control**

The Contractor must issue a list of all workers who will enter the Facility's premises by a company official. The list is provided to the Security Department prior to an employee or agent being authorized access to the premises.

Workers must identify themselves at the Security checkpoint entrance to the Facility. Verification will be by the submitted name list. Contractors should provide their workers with a nametag with the following information:

Name of company
Name and surname of worker
Position
Photograph of worker
Number of tag

Workers will be issued a colored wristband to verify they have checked in with HCC Security and are authorized to be on property.

The Facility, at its discretion, can object and require the Contractor to remove any person(s) employed by the Contractor or agent from the site who, in the opinion of the Facility is incompetent or negligent in the proper performance of their duties or whose employment or behavior is otherwise considered by the Facility as undesirable. Such persons are not employable or can continue work at the Facility.

B. **Means of Access**

Workers must only enter and exit the Facility through the Security Check-In on the Intermediate Level. It is accessible by walking along the Ala Wai Terrace Promenade past the Grand Staircase. When entering through the parking level, take service elevators 4 and 5 located in Section F, to the Intermediate Level "2" to Security Check-in. Contractors are not allowed to use guest elevators.

On the first day of work, all workers are to meet at the designated entrance for the identified management personnel to direct them to the work site.

C. **Daily Responsibility**

A responsible person designated by the Contractor will report their daily scope of work to the designated management in charge before commencing work. The Chief Engineer is the main point of contact should it be necessary to isolate or shut down any of the Facility plant equipment or systems.

D. **Event Contractor Use of Wristbands**

Should a contractor doing business on HCC decide to use a wristband system to ensure security within their area of operation, The Event Manager will be responsible for informing HCC Security of the use of wristbands and the color the contractor will be using. This will enable Security to select a different color than the contractor so there is no confusion.

E. **Before/After Shift**

Contractors are only allowed to be on site ½ hour prior and ½ hour after a scheduled shift. Contractors are not allowed on site when not scheduled.

III. **FIRE, HEALTH AND SAFETY - GENERAL RULES**

SMOKING IS STRICTLY PROHIBITED IN ALL AREAS OF THE FACILITY EXCEPT IN THE DESIGNATED SMOKING AREA.

Contractors and contractor's employees must abide by the Facility current COVID-19 protocols and procedures.

The contractor MUST appoint a responsible person to coordinate and ensure all safety measures and MUST be present at the project site at all times.

HCC/AEG designated management personnel will brief the contractor on the facility's firefighting system, fire detection system and evacuation routes and the Facility work safety guidelines.

All working areas must be cleaned, and debris removed from the Facility premises on a daily basis at the end of each day.

All work areas are to be properly secured prior to departure at the end of a day.

A fully supplied first aid kit must be provided by the Contractor and kept at the work site.

All workers are to be properly dressed based on the safety guidelines with proper shoes or boots.

All electrical equipment is to be properly wired, grounded with correct fitting plugs. Items inoperable or hazardous must be handled under the lockout tag out guidelines.

IV. **EQUIPMENT SAFETY**

Any moving vehicle (electric carts, scooters, bicycles, tricycles, etc.) must be pre-approved in writing for use by the Facility Director of Operations prior to use in the Facility. Use of approved vehicles is restricted to work areas only.

Approved personnel using a scissor or boom lift must wear a hardhat and eye protection. A safety harness is required when using lifts at all times.

Workers operating equipment, such as forklifts and aerial lifts must be certified in the use of such equipment and carry proof of such current certification while operating equipment. Operators must present current certification at Security Check-in and obtain a wristband authorizing use of lifts owned by HCC.

Transporting lifts to another level, through the Facility freight elevators require pre-approval and scheduling of an elevator operator through the Facility.

No vehicles or pallet jacks are allowed to be operated on the green, slate tile floor areas without pre-approval. Necessary preparations are required.

V. **HAZARDOUS WORK AND MATERIALS**

A special Work Permit must be filed with the Chief Engineer or designated department prior to commencement of hazardous work for:

- Welding
- Cutting
- Scaffolding work
- Spray painting or varnishing
- High suspension cleaning

Note: A separate fire extinguisher must be provided at location of all welding or cutting work.

All hazardous materials e.g. solvents, pressurized canisters, gasoline, oils, fuels, paints, varnishes etc. shall be stored in approved designated areas and in OSHA approved storage containers. All containers will be metallic and properly sealed. All containers will be properly labeled. Proper respiratory masks must be used. NO SMOKING must be enforced. All materials are identified in the MSDS sheets available in each department and Security Base. Contractors are responsible for disposing of any hazard chemical brought onto HCC property.

VI. **SPECIAL REQUIREMENTS**

A. **Noise Control**

The Contractor shall note that no noisy Work will be allowed to be carried out before 8 a.m. and after 5 p.m.

Due to "business as usual" factor for the Facility, it is further required that noise levels be maintained at a low level to minimize the disturbance/noise nuisance to the Facility occupants. This will include cutting of holes, drilling/fixing to structures, alterations and demolition, grinding of steel, removal of existing elements, finishes, fittings, fixtures, hacking/hammering etc. This type of work should be effectively reduced to an absolute

minimum by adoption of alternative methods/fixings and containment on the carrying out of all such noisy operations within limited periods daily.

Should noise levels in the opinion of the Facility become excessive and unacceptable under the above conditions, the Contractor will be requested to take immediate action to cease all operations giving rise to the unacceptable noise levels and to amend his methodology to allow him to continue within the acceptable noise limits.

B. Construction Barricades

The Contractor may be required to provide a section of boarding or construction barricades to match the surrounding area to separate the work areas from the Facility public areas and to prevent all unauthorized public access to all work areas. This boarding will require adaptation and relocation to suit the phasing/staging of the project work.

Before erection/ alteration of boarding, the Contractor will submit a detailed plan showing the proposed form/ location of boarding for approval by the Facility.

C. Quarterly Meeting

The Contractor is required to attend HCC Quarterly Contractor's meeting, held at the Facility. A minimum of one company representative must sign-in for attendance. Notification of the meeting schedule will be sent via email to the designated contact. It is the Contractor's responsibility to ensure that the most current email address and contact information is provided to the Facility.

VII. GENERAL DO'S AND DON'T'S

1. Only authorized subcontractors and their employees are permitted to operate and conduct business within the Facility. The Director of Operations will determine authorized contractors.
2. Children under eighteen (18) years of age are not permitted in work areas.
3. This is a State-owned building and therefore it is a NO SMOKING facility. Smoking is prohibited in all areas of the Facility except in the designated smoking areas. The designated smoking area is located in the ma uka/Waikīkī corner of the parking garage. Contract employees are prohibited from using the Porte Cochere or Kahakai Drive as a smoking or break area.
4. Contractor must stay in designated job site areas only and must not stray to any other areas of the Facility under any circumstances. At the end of the shift, contractors are not allowed to remain on property or at their vehicles.
5. No Contractor is allowed, at any time, in the client, guest/public areas of the Facility nor be allowed to use any guest elevator or restroom in the Facility.
6. ALL contractor workers are required to sign in and out of the building at Security Check-In located on the intermediate level. Workers are required to sign in and obtain an identification wristband while on Facility property. Workers are required to return to Security Control and sign out at the end of their work shift.
7. All signs and traffic markings must be obeyed in the parking garage.

8. There is no overnight parking allowed unless prior arrangements have been made with the Director of Security. If authorization is given, an overnight permit will be issued and must be displayed on the dashboard of the vehicle it is issued to. Parking cost will be charged for each day the vehicle is parked. Vehicles left overnight without authorization will be towed at owner's expense.
9. Contract workers who are dropped off and picked up at the start and end of their shift need to arrange these pick-ups and drop offs on Kalakaua Avenue ONLY. Kahakai Drive is not to be used as a waiting area for pick up.
10. Contractor will maintain complete separation of construction areas for existing functions for airborne contaminants, dust control, noise, waste and all OSHA safety standards.
11. Contractor is responsible for the protection of his work and adjoining areas.
12. Contractor will maintain clear egress in corridors at all times during construction until completed or approved alternative route is established.
13. Under no circumstances may any exterior door be blocked open
14. Contractor shall use designated loading dock area only for the receiving of goods. Loading docks will be used for active unloading and loading only. Dock reservations are required and can be made through docres@hccasm.com. No vehicles will be parked in the loading dock. No deliveries through the front entrance are allowed.
15. Contractor must park in the area designated by the Facility.
16. There will be no alcohol, beer, wine or drugs consumed on the job site or during the workday whatsoever.
17. Meals are to be consumed only in the Lunch Room located on the Parking Level to the rear of Elevators 4 & 5.
18. All bags or boxes are subject to security check upon entering or leaving the building. Any refusals will cause the person to be barred from the Facility premises.
19. Contractor is to furnish their own tools. Under no conditions will a non-Facility employee be allowed to use a Facility tool. By the same token, Facility employees are not to use Contractor's tools.
20. The Facility is not responsible for the Contractor's property.
21. All work areas must be kept clean at all times. Contractor is responsible for the removal of all debris and excess material during and at the completion of the project. Contractor is not to use Facility telephones at any time for any reason.
22. Contractor must wear clothing, which is in good taste. Any attire which causes unwarranted distractions is unauthorized. Lack of a shirt or wearing muscle, fishnet, sleeveless shirts, cut-offs, shorts or sandals are not permitted. Clothing with offensive wording is prohibited.
23. Proper protective safety equipment shall be worn at all times. (No open toe shoes, slippers, etc.)
24. Contractors must conduct themselves in a professional manner and are subject to the same rules as Facility Employees. No shouting, profanity, "cat calling" or confrontation with Facility guests or with Facility employees will be tolerated.

25. Contractors are not permitted to fraternize with Facility employees, clients, guests or patrons.
26. The use of portable radios, stereos is strictly prohibited.
27. Violation of these policies will be documented and reported to Facility management for appropriate action

Revised: 2/2023.

APPENDIX F

AGREEMENT FOR RENTAL OF EQUIPMENT (WITHOUT OPERATOR)

Exhibit C

AGREEMENT FOR RENTAL OF EQUIPMENT (Without Operator)

This Agreement is entered into effective _____ between the Hawaii'i Convention Center ("HCC"), State of Hawaii'i, through AEG Management HCC, LLC. and its General Manager, and _____ ("Renter"), whose business address, phone, fax and email are as follows:

1. AEG Management HCC, LLC. manages the Hawaii'i Convention Center ("the HCC") under a management contract with the State of Hawaii ("State"). The State has purchased certain equipment for use by AEG Management HCC, LLC. in performance of its contract. The equipment rented hereunder is State property, being rented by AEG Management HCC, LLC. on behalf of the State and for the convenience and use of the Renter.
2. The Renter is a licensee or a sub-contractor of a licensee that has been granted a license to conduct an event or vendor performing procured services at the Hawaii'i Convention Center.

3. Equipment Rented.

HCC agrees to permit the Renter to utilize within the confines of the HCC the following equipment at the following rates:

	Equipment Description	Hourly	Daily	Weekly
a.	36' Articulated Boom Lift	\$90.00	\$320.00	\$900.00
b.	30' Scissor Lift	\$90.00	\$320.00	\$900.00
c.	18' Work Platform Lift	\$90.00	\$320.00	\$900.00
d.	Forklift	\$75.00	\$275.00	\$750.00
e.	ReachMaster Compact Lift, 56' height, 38' reach	\$100.00	\$350.00	\$1,000.00
f.	ReachMaster Compact Lift, 121' height, 50' reach	\$125.00	\$450.00	\$1,250.00

Fractions of an hour shall be charged at the hourly rate.

Rental fees may be waived upon pre-approval of the Director of Operations or the Director of Finance.

4. Rental Period.

This Rental Agreement shall be for a period from _____ (start date/time) to _____ (end date/time).

5. Renter's Responsibilities.

The Renter shall:

- a. Operate the equipment only within the Hawaii'i Convention Center and its immediate surroundings within the area(s) pre-approved by HCC for this specific rental.
- b. Ensure that only fully qualified and certified personnel operate the equipment.
- c. Provide proof of certification to operate the equipment prior to use which must be presented in advance of

the rental operation to the Maintenance Manager or their designee.

- d. Check-in at Security Base. Ensure that the equipment is fully operational upon acceptance of the equipment and submit the related HCC form with the Maintenance Manager or their designee.
- e. Immediately halt use of any equipment and bring to the attention of the Maintenance Manager any equipment operating deficiencies or problems.
- f. Ensure that equipment is under positive control of the Renter at all times and that no unauthorized individuals are permitted to utilize the equipment.
- g. Ensure that all safety and operating rules are strictly followed. This includes, but is not limited to, the use of a hard hat and close-toed shoes by any and all parties while using equipment items 3a, 3b, 3c, 3e, or 3f above. All related items must be supplied by the Renter.
- h. Be fully responsible for any damage to or loss of the equipment.
- i. Be fully responsible for any and all damages caused by operation of the equipment.

6. Statement of Waiver.

The Renter waives any and all claims against the State of Hawaii, the Hawaii Tourism Authority (HTA), the HCC, AEG Management HCC, LLC., their officers and assigns from any and all claims including consequential damages arising from the use and/or operation of subject equipment by _____ (Renter), its employees, agents, and/or assigns.

7. Indemnification.

The Renter shall defend, indemnify, and hold harmless the State of Hawaii, the HTA, the HCC, AEG Management HCC, LLC. and all of their members, officers directors, employees, and agents from and against all costs, liability, loss, damage, and expense, including all attorney's fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of _____ (Renter) or _____ (Renter's) employees, officers, agents or subcontractors as it pertains to the operation of subject equipment.

8. Liability Insurance.

The Renter shall provide proof of insurance to AEG Management HCC, LLC. that its operation of the equipment provided hereunder is covered under its Comprehensive General Liability and Property Damage Liability Insurance. Such liability shall be with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any variance or waiver of this requirement must be pre-approved by the General Manager.

Such insurance shall name the State of Hawaii, the Hawaii Tourism Authority, AEG Management HCC, LLC., and all of the members, officers, agents, and employees of each of them as additional insured with respect to claims arising out of or directly or indirectly relating to performance under the Agreement and shall provide for thirty (30) days advance notice of cancellation, reduction of coverage or non-renewal to the State of Hawaii, the HTA, HCC, and AEG Management HCC, LLC. and shall be endorsed to stipulate that the insurance afforded the State of Hawaii and HCC boards, officers, agents, and employees shall be primary insurance and not contributing with any other insurance of the State of Hawaii and HCC.

9. Compliance with Laws.

The Renter shall operate the equipment in strict compliance with all laws of the United States, the State of Hawaii, the City & County of Honolulu, and all rules and regulations issued pursuant to such laws.

Renter shall comply with all lawful directives issued by the General Manager of HCC or their representative in enforcing of the terms of this Agreement.

10. Entire Agreement.

This document contains the complete and exclusive agreement between the parties, and it is intended to be a final expression of their agreement. No promise, representation, warranty, or covenant not included in this document has been or is relied upon by any party. Each party has relied upon its own examination of the full Agreement and the provisions thereof and the counsel of its own advisors, and the warranties, representations and covenants expressly contained in this Agreement itself. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by all parties herein.

11. Assignment.

The Renter shall not transfer, convey, assign, or permit the use of any of the rights or privileges granted under this Agreement in whole or in part to any other person, firm, or corporation without the prior written authorization of HCC. Such rights and privileges are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any assignee approved by HCC must accept and assume all the terms and conditions of this Agreement to be kept and performed by Renter, and such assignment shall not in any manner discharge or release Renter from any of the obligations under the terms of this Agreement.

12. Severability.

The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision herein.

IN WITNESS WHEREOF, the parties execute this Agreement on the dates below, to be effective as of the date first above written.

HAWAII CONVENTION CENTER (AEG Management HCC, LLC.)

BY: _____ Date _____
General Manager

Renter

BY: _____ Date _____
Signature

Title