

ADDENDUM NO. 1
TO REQUEST FOR PROPOSALS
FOR PARKING LOT FLOOR SEALING
FOR HAWAI'I CONVENTION CENTER
RFP NO. 2024-11

DATED: October 29, 2024

I. Amendments to Section 2.4.5 Scope of Work Detail - General

A. Parking Garage Sealing and Re-Striping

- Repair any cracks or holes with appropriate filler material and allow it to cure as per manufacturer's instructions. All filler specifications are to be submitted to PM/CM and HCC for review and approval prior to application.
 - i. Floor finish in parking garage does not need to be smooth and/or flawless. Imperfections of existing concrete slab visible in Aisles F & G does not need to be infilled/corrected. The Awarded Contractor is to repair any and all areas of the parking garage floor where spalling, cracks, and penetrating holes are present and may pose as an entry point for water to enter.
- Contractor shall remove all wheel stops and speed bumps prior to floor re-sealing. All wheel stops to be re-installed upon turnover to HCC.
- Contractor shall ensure that speed bumps are installed prior to all pedestrian crosswalks. Contractor shall repair any penetrating holes associated with relocation of speed bumps.
- Contractor shall include all areas of the parking garage in scope of work which includes but is not limited to all existing storage cages, landscaping area, and employee break area.

B. Parking Garage Re-striping

- Increase number of handicap stalls in row A.
 - i. Awarded Contractor to verify the number of available ADA stalls are compliant with current code requirements. If additional stalls are needed, Awarded Contractor to include in scope of work.
 - ii. Awarded Contractor to field verify current dimensions of all ADA stalls and adjust dimensions accordingly to be compliant with all current code requirements.
- Smoking Area
 - i. Contractor to indicate a *No Parking* area approximately 100 square feet in size to be designated the Smoking Area.
 - ii. Awarded Contractor to coordinate with HCC for removal of existing furniture prior to repair/re-sealing/re-striping of this area.

C. Parking Garage Painting Color Clarifications

- Aisle A: Staff Parking
 - i. Stalls to be painted in with a solid green. *Reserved* to be painting in white. Similar to existing design,
- Aisle A: ADA Parking

- i. All ADA stalls shall be paint in solid blue with ADA logo and lettering painted in white.
- Aisle B: HTA Parking
 - i. Stalls to be painted in with a solid green. *Reserved* to be painting in white. Similar to existing design.
- Aisle B: EV Charging Stalls
 - i. Stalls to be painted in with a solid green. Official EV logo to be painted in white.
 - ii. Existing EV stall to become an ADA compliant EV charging stall and shall comply with all ADA codes.
- Aisles F and G: Staff/Contractor Parking
 - i. Stalls to will not have any special color fill-in or adorn any special markings. Stalls to be in similar style with all other parking stalls.
- Elevators 4/5 and 6/7
 - i. Fire lane to be painting red in front of elevators. *No Parking* in white letters.
 - ii. Curbs to be painted to match
- Loading Zones
 - i. Loading Zone striping to be in yellow with *Loading Zone – 15 Minute Limit* in white.
 - ii. Curb to be painted to match.
- Pedestrian Crosswalks – Main Center Walkway
 - i. Main center walkway shall be black/white/yellow
 - ii. Pedestrian Crossing shall match existing – Black board with yellow solid infill and white lettering.
- Pedestrian Crosswalks – Ends of Parking Aisles
 - i. Walkways at the ends of each aisle, traversing through parking garage shall match the main crosswalk resulting in all crosswalks being identical in color.
- Helix Ramp Curbs (Both)
 - i. Curb shall be painted yellow on the vertical and horizontal face throughout helix ramp.

II. RFI Responses

- A. Attached are the RFI Responses to all RFI questions.

III. Amendments to Appendix B

- A. Attached is Appendix B: AIA Document A105 – 2014 Standard Short Form Agreement Between Owner and Contractor.

IV. Amendments to Appendix C

- A. Attached is Appendix C Exhibit A: AIA Document A312 – 2010, Exhibit A: Payment Bond
- B. Attached is Appendix C Exhibit B: AIA Document A312 – 2010, 2014, Exhibit B: Performance Bond
- C. Attached is Appendix C Exhibit C: Special Conditions
- D. Attached is Appendix C Exhibit D: General Conditions

V. Amendment to Appendix G

A. Attached is Appendix G Exhibit C: HCC Overall Parking Floor Plan

In all other respects, the RFP shall remain unchanged.

RFI LOG

RFI QUESTION(S) AND ANSWER(S)

**REQUEST FOR PROPOSALS
PARKING FLOOR SEALING
FOR HAWAII CONVENTION CENTER**

ITEM NO.	DATE OF QUESTION / RESPONSE	QUESTION / RESPONSE
Q-01	10/16/2024	What is the total square footage of the parking deck and both ramps? <i>The total square footage of the parking deck and all ramps is 276,166 square feet per plan. Contractor is expect to field verify.</i>
Q-02	10/16/2024	What is the minimum stalls HCC would want to keep open for use to customers at any given time during the project? Please also include ADA stalls? <i>No minimum stalls to keep open.</i>
Q-03	10/16/2024	Are expansion joints included in this project? <i>Yes - all expansion joints are included in scope. All existing sealant should be removed and replaced. Contractors should provide a unit cost in their rate card.</i>
Q-04	10/16/2024	Does HCC have a preference regarding the look of the floor (i.e. completely smooth or some indentations)? <i>Yes - HCC does not they expect the contractor to create a smooth surface in the parking garage. Some indentations, specifically those seen during the site walk in Aisle G, are acceptable to remain. Contractors are expected to repair all penetrating holes and cracks/spalling.</i>
Q-05	10/16/2024	For the contractor (green) stalls, is the expectation to go back with the same color? <i>These stalls will not be painted solid color. Regular stall but will be numbered.</i>
Q-06	10/16/2024	For the entrance/exit ramps, is the expectations to go back with the same type of flooring system as the main parking garage floor? <i>Yes - the contractor should utilize the same flooring system that will be utilized within the parking garage</i>
Q-07	10/16/2024	For the helix ramps, is the expectation to go back with the same raised traffic indicators? <i>Yes - the contractor should remove and replace the raised white traffic indicators throughout both helix ramps.</i>
Q-08	10/16/2024	In regards to the helix ramps, where should the new system be installed (i.e. drive path, curb, walls). <i>For the helix ramps, the new flooring system should be installed on the drive path, on both vertical and horizontal faces of the curb, and 4" up the walls. The new flooring system should continue from the main parking level through the entire helix ramp and extend 6' past the existing roll gates.</i>
Q-09	10/16/2024	Are all cages/fenced areas within the parking garage included in the scope of the project? <i>Yes - All cages/fenced areas including the landscaping cage and the employee break area are included in the scope of this project.</i>
Q-10	10/16/2024	Does HCC know the number of stalls existing in the parking garage currently? <i>Yes - As-built plans indicate that there are a total of 800 vehicle stalls (16 ADA, 464 regular, and 320 compact). Existing counts may differ, contractor to field verify prior to work commencing.</i>
Q-11	10/23/2024	Do you require a minimum manufacturer warranty for the parking floor sealer product we select for our bid? <i>Please provide your warranty terms</i>
Q-12	10/23/2024	Can we request a second walkthrough and when can we schedule? How much lead time do you need? <i>There will not be a second walkthrough.</i>
Q-13	10/23/2024	Can we please get a clearer parking lot site plan that shows the layout, dimensions, distance of stall lines, stall labeling, colors, placement of arrows, placement of crosswalks, placement of ADA stalls, placement of fire lanes, etc.? The previous one sent is difficult to read. <i>Yes - All plans associated with the parking garage and ramps will be issued as an addendum to Appendix G.</i>
Q-14	10/23/2024	When does HCC want this project to start? <i>2025 but will be dependent on HCC event schedule</i>
Q-15	10/23/2024	When does HCC expect this project to be complete? <i>2025 but will be dependent on HCC event schedule</i>
Q-16	10/23/2024	We would like to see if it's okay to visit the site on Monday, 10/28 at 10:30 AM to review the current conditions with the representative from the flooring manufacturer we'd like to use. Please confirm if this is okay. <i>There will not be a second walkthrough.</i>
Q-17	10/23/2024	Will the parking booths stay in place or be removed to coat under to ensure a complete waterproof system with no possible voids? <i>Parking Booths will stay in place.</i>
Q-18	10/25/2024	Grind or scarify to remove existing coating off only or to smooth surface as well, some areas are rough and have various <i>HCC would like the contract to propose and perform the necessary prep work to ensure the new system adheres to the floor. Additionally, prep and installation should follow all manufacturer guidelines to comply with warranty.</i>
Q-19	10/25/2024	Please clarify overview layout map is how the new layout is to be since it is different from the existing conditions <i>Awarded Contractor shall provide a design of the new parking layout for HCC to review and approve. The intent is that the Awarded Contractor may have to modify the existing layout to adhere to current code requirements.</i> <i>Appendix G Exhibit C depicts the overall parking floor plan.</i>

**REQUEST FOR PROPOSALS
PARKING FLOOR SEALING
FOR HAWAII CONVENTION CENTER**

ITEM NO.	DATE OF QUESTION / RESPONSE	QUESTION / RESPONSE
Q-20	10/25/2024	Are the exterior non covered areas that have an existing membrane to receive a new membrane barrier or just sealer? All areas of the parking garage shall receive the same system proposed by the Awarded Contractor and approved by HCC. Areas with current sealer are to be removed prior to installation of the new flooring.
Q-21	10/25/2024	Are the areas that have the tan sealer to received same or just clear finish like the other areas? All areas of the parking garage shall receive the same system proposed by the Awarded Contractor and approved by HCC. Areas with current sealer are to be removed prior to installation of the new flooring.
Q-22	10/25/2024	Estimated SF of area that can be worked on at a time and possible duration, knowing things are subject to change based on schedule events Contractor to present how much they feel they can get done at one time.
Q-23	10/25/2024	Define other surface imperfections & required repairs. HCC would like all spalling, cracking, and penetrating holes to be repaired prior to installation of the new flooring system. The completed floor does not need to have a smooth appearance.
Q-24	10/25/2024	Oil stains cannot be 100% extracted & will only be clean enough to receive new coatings per manufacture. Please acknowledge or clarify. Confirmed. Contractor shall prep floors in manner in which the new parking floor may be installed and comply with warranty guidelines.
Q-25	10/25/2024	Page 8 says increase number of handicap stall Row A. Please identify locations and how many more to be added Contractor to measure out stalls and ensure that the ADA stalls are ADA compliant. If we are able to increase the number of ADA stalls then we will.
Q-26	10/25/2024	Please clarify inside of case areas will not receive new coating or just under the case fencing HCC would like the new coating to be installed in all areas of the parking garage and entry/exit ramps. This will include installation in all caged storage areas, landscaping area, and employee break area.
Q-27	10/25/2024	General requirements 25 C - All exception to these Specification & drawing must be made with the proposal submission. Can you please strike out drawings since this is DB & no drawing has provided? Please see Appendix G for HCC Architectural As-Builts.
Q-28	10/25/2024	Section D, please clarify or explain in detail. All work has some sort of odors (coatings), dust (grinding), vibration (grinding) & visual impacts HCC requires that all active construction work and the associated effects not impact and/or impede business operations. The Awarded Contractor will propose a logistics plan with these considerations for HCC to review and approve.
Q-29	10/25/2024	Even with dust collectors there is still low level of dust during activities, if 0 emissions is required secondary enclosures will have to be in place which is not cost efficient. Please clarify During active construction, the Awarded Contractor shall implement a dust mitigation system to prevent impact to other areas. HCC would like the contractor to propose how they intend to mitigate dust impact to the remainder of the convention center and its events
Q-30	10/25/2024	Clarify if Erosion Control is required & within what areas. Seeing that this is within parking structure with no landscape, are we to protect landscape storage area? Confirmed - The Awarded Contractor shall propose a logistics plan with considerations for all potential impact that may impede normal business operations for the Convention Center. There are existing planters along the parking level and Kalakaua Entrance ramp. The Awarded Contractor shall ensure these planters and landscaping within those planters are properly protected.
Q-31	10/25/2024	If possible, I'll like to swing by HCC this Tuesday, Oct 29th at 1030am with one of my other painting contractors to view the convention center parking deck to take additional measurements, photos and assessments for your RFP. Please let me know once confirmed. HCC will not be hosting an additional contractor site walk at this time.

APPENDIX B

AIA Document A105 – 2014

Standard Short Form of Agreement Between Owner and Contractor

DO NOT EXECUTE

DRAFT AIA® Document A105® - 2017

Standard Short Form of Agreement Between Owner and Contractor

AGREEMENT made as of the «TBD» day of «TBD» in the year «2024»
(In words, indicate day, month and year.)

BETWEEN the Owner:Manager, also referred to as ("Company"):
(Name, legal status, address and other information)

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

and the Contractor:Design-Builder, hereinafter referred to as the ("Contractor"):
(Name, legal status, address and other information)

«TBD»
«TBD»
«TBD»
« »

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

«Parking Lot Floor Sealing Project for the Hawaii Convention Center per the scope of work described in RFP#2024-11 (Section 2) and Contractor's proposal to RFP#2024-11 dated September 30, 2024»
«Hawaii Convention Center ("HCC")»
«1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

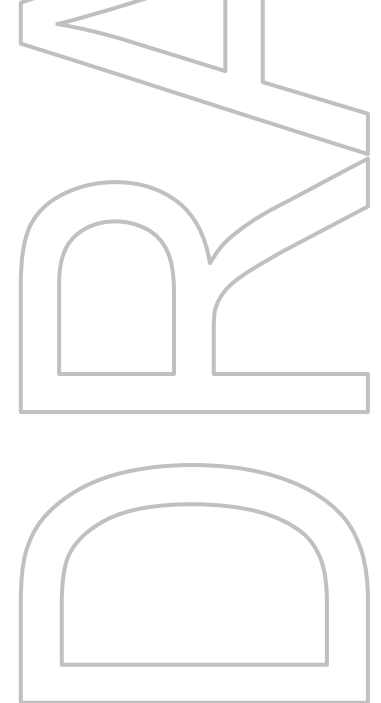
The Architect:
The Project and Construction Manager:
(Name, legal status, address and other information)

«Cumming Management Group, Inc.
841 Bishop Street, Suite 725
Honolulu, HI 96813»

The Owner Manager and Contractor 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.



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ARTICLE 1 THE CONTRACT DOCUMENTS

~~The Contractor shall complete the Work described in the Contract Documents for the Project. The Contract Documents consist of~~ § 1.1 The Contractor shall complete the Work described in the Contract Documents for the Project. In the case of a conflict or ambiguity between the terms of the Contract Documents, the Contractor shall resolve such ambiguity or conflict in the order set forth below, with 1.1.1 taking precedence, and 1.1.8 lower in order. Notwithstanding anything to the contrary within this Section, in the event that a conflict or ambiguity exists within the Contract Documents, the Contractor shall resolve said ambiguity to include the highest quality and largest quantity. The Contract Documents consist of:

~~.1 this Agreement signed by the Owner and Contractor;~~ This Agreement signed by the Manager and Contractor;

.2 A312-2010 Payment & Performance Bonds;

.3 The Special Conditions, attached hereto as Exhibit C;

.4 The General Conditions, attached hereto as Exhibit D;

~~.2~~ the drawings and specifications prepared by the Architect, dated [redacted], and enumerated as follows; .5

Change Orders and Modifications to the above documents issued after the date of the Agreement (A105-2017);

Drawings; .6 Other Exhibits to the Agreement;

Number	Title	Date
[redacted]	[redacted]	[redacted]

.7 The RFP including all amendments and addenda; and

Specifications: 8 Proposal (including BAFOs) in response to RFP No. #TBD 2024-11.

Section	Title	Pages

§ 1.2 Design-Build Work:

3 addenda prepared by the Architect as follows:

Number	Date	Pages

4 written orders for changes in the Work, pursuant to Article 10, issued after execution of this Agreement; and

5 other documents, if any, identified as follows:

Contractor shall be responsible for designing and constructing portions of the Project as designated by Manager or as otherwise set forth in the Contract Documents ("Design-Build Work"). Contractor hereby warrants and represents to Manager that (a) all Design-Build Work shall be designed by licensed professionals; (b) the designs for all Design-Build Work shall comply with all applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of any public authority having jurisdiction over the Project; (c) the Design-Build Work shall comply with any outline and performance specifications prepared by the Manager's design professionals, if any; (d) such systems shall adequately perform the functions for which they are intended and properly function together; and (e) the Design-Builder will carry the requisite insurance minimums as required under the Contract Documents. If and to the extent that Manager's design professionals do not provide outline and performance specifications for any of such systems, Contractor shall, prior to designing such systems, provide for Manager's review and written approval, outline and performance specifications for the systems. If Contractor fails to obtain Manager's applicable prior written approval of such outline and performance specifications prior to such systems being designed, Contractor shall be responsible, at its sole cost and expense, for redesigning and for reconstructing such systems so that they meet Manager's criteria. Contractor shall deliver to Manager all plans and specifications prepared by Contractor or its subcontractors for such systems, and all rights, title and interest in and to such plans and specifications shall belong to Manager.

ARTICLE 2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 2.1 The Contract Time is the number of calendar days available to the Contractor to substantially complete the Work.

§ 2.2 Date of Commencement:

Unless otherwise set forth below, the date of commencement shall be the date of this Agreement. (Insert the date of commencement if other than the date of this Agreement.)

The date of commencement shall be set forth in a written "Notice to Proceed" letter.

§ 2.3 Substantial Completion:

Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion, as defined in Section 12.5, of the entire Work:
(Check the appropriate box and complete the necessary information.)

[] Not later than () calendar days from the date of commencement.

[] By the following date:

§ 2.4 Liquidated Damages:

The Contractor's failure to substantially complete the Work within the time period set forth in Section 2.3 shall result in liquidated damages in the amount of Five Hundred dollars and zero cents (\$500.00) per calendar day.

The Contractor is on notice that the Work being performed under this Contract at the Hawaii Convention Center where numerous events are scheduled that involve all or various portion of the building. Scheduling of the Work shall and will be done so as not to negatively impact scheduled events. If certain portions of the Work are not performed on time, this could have a negative impact on scheduled events and the running of the Convention Center in general.

Consequently, due to the difficulty in determining actual damages should the Work not be completed as stated in the Contract documents, the liquidated damages herein are an approximation of the actual damages should such a delay in completion occur by the Contractor.

ARTICLE 3 CONTRACT SUM

§ 3.1 The Contract Sum shall include all items and services necessary for the proper execution and completion of the Work. Subject to additions and deductions in accordance with Article 10, the Contract Sum is:

(\$) <TBD Dollars and TBD Cents> (\$ <TBD>)

§ 3.2 For purposes of payment, the Contract Sum includes the following values related to portions of the Work:
(Itemize the Contract Sum among the major portions of the Work.)

Portion of the Work	Value
<u>N/A</u>	<u>N/A</u>

§ 3.3 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and hereby accepted by the Owner/Manager:
(Identify the accepted alternates. If the bidding or proposal documents permit the Owner/Manager to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires.)

<TBD>

§ 3.4 Allowances, if any, included in the Contract Sum are as follows:
(Identify each allowance.)

Item	Price
<u>See Attachment A – Proposal Form & Rate Card</u>	

§ 3.5 Unit prices, if any, are as follows:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
<u>Request to Stop Work; where initially Manager accept Work on a particular day, but have to stop on the day, due to unforeseen circumstances.</u>	<u>5 Stop Work Days</u>	

ARTICLE 4 PAYMENTS

§ 4.1 Based on Contractor's Applications for Payment certified by the Architect, the Owner-Project and Construction Manager ("CM/PM"), the Manager shall pay the Contractor, in accordance with Article 12, as follows:
(Insert below timing for payments and provisions for withholding retainage, if any.)

- <.1 The period covered for each payment application shall cover one (1) calendar month, ending on the last calendar month.
- .2 The Manager will pay the Contractor in full minus five percent (5%) retainage for each calendar month payment application, certified by the CM/PM, until such a time that the contract is past fifty percent (50%) complete, and progress is satisfactory, no additional sum may be withheld from any payments to the Contractor.
- .3 Application for payment 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.
- .4 Section 103-32.1(d)(3), Hawaii Revised Statutes (HRS) allows the Contractor to withhold from amounts due its Subcontractors, only the same percentage of retainage as that of the Contractor, and only if its subcontractors have provided valid performance and payment bonds or other bond or collateral acceptable to the Contractor. Section 103-32.1, HRS, allows the Contractor 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 Manager unless: (1) the Contractor's progress is not satisfactory, in which case the Manager 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 Contractor or Subcontractor has negotiated a retainage in excess of the five percent (5%), but no more than ten percent (10%).»

§ 4.2 Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the rate below, or in the absence thereof, at the legal rate prevailing at the place of the Project.
(Insert rate of interest agreed upon, if any.)

«N/A» % « »

ARTICLE 5 INSURANCE & BONDS

§ 5.1 The Contractor shall maintain the following types and limits of insurance until the expiration of the period for correction of Work as set forth in Section 14.2, subject to the terms and conditions set forth in this Section 5.1:

§ 5.1.1 Commercial General Liability insurance for the Project, written on an occurrence form, with policy limits of not less than ~~(\$) each occurrence, (\$) general aggregate, and (\$) aggregate for products completed operations hazard.~~ «one million dollars» (\$ «1,000,000.00») each occurrence, «two million dollars» (\$ «2,000,000.00») general aggregate, and «two million dollars» (\$ «2,000,000.00») aggregate for products-completed operations hazard. 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 Contractor's liabilities assumed under this Contract, including indemnification obligations under Section 8.12; and (iii) follow a form umbrella or excess liability with a limit of five million dollars (\$5,000,000).

§ 5.1.2 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Contractor, with policy limits of not less than ~~(\$) «one million dollars» (\$ «1,000,000.00»)~~ per accident, for bodily injury, death of any person, and property damage arising out of the ~~ownership, Manager, maintenance, and use of those motor vehicles~~ along with any other statutorily required automobile coverage. Automobile Liability insurance shall include coverage for automobile contractual liability.

§ 5.1.3 The Contractor may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella insurance policies result in ~~the same or greater coverage as those required under Section 5.1.1 and 5.1.2, not less than five million dollars (\$5,000,000.00) coverage~~ and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ 5.1.4 Workers' Compensation at ~~statutory limits applicable statutory requirements of the State where the Project is located.~~

§ 5.1.5 Employers' Liability with policy limits not less than ~~(\$) each accident, (\$) each employee, and (\$) policy limit.~~ «one million dollars» (\$ «1,000,000.00») each accident, one million dollars (\$1,000,000.00) each employee, and two million dollars (\$2,000,000.00) policy limit. Employers' Liability insurance shall also include a Waiver of Subrogation in favor of AEG Management HCC, Hawai'i Tourism Authority, ASM Global, 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 "Manager 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. Contractor 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 Contractor pursuant to this paragraph.

§ 5.1.6 The Contractor shall provide builder's risk insurance to cover the total value of the entire Project on a replacement cost basis.

§ 5.1.7 Other Insurance Provided by the Contractor

(List below any other insurance coverage to be provided by the Contractor and any applicable limits.)

Coverage	Limits
Professional Liability/Errors and Omissions Insurance (where applicable)	Two million dollars (\$2,000,000.00) each claim occurrence and two million dollars (\$2,000,000.00) in the aggregate.
Personal Property Insurance	Value of Contractor’s personal property, tools, equipment and other property.
Pollution Liability Insurance (where applicable)	One million dollars (\$1,000,000.00) each claim occurrence and one million dollars (\$1,000,000.00) in the aggregate.

[The Professional Liability/Errors & Omissions Insurance shall be for protection of claims arising out of negligent acts, professional services/errors, and omissions by or for the Contractor. The Personal Property insurance shall include a Waiver of Subrogation in favor of the Company Indemnitees.](#)

~~§ 5.2 The Owner shall be responsible for purchasing and maintaining the Owner’s usual liability insurance and shall provide property insurance to cover the value of the Owner’s property. The Contractor is entitled to receive an increase in the Contract Sum equal to the insurance proceeds related to a loss for damage to the Work covered by the Owner’s property insurance.~~
~~Intentionally deleted.~~

§ 5.3 The Contractor shall obtain an endorsement to its Commercial General Liability insurance policy to provide coverage for the Contractor’s obligations under Section 8.12.

§ 5.4 Prior to commencement of the Work, each party shall provide certificates of insurance showing their respective coverages.

§ 5.5 Unless specifically precluded by the ~~Owner’s-Manager’s~~ property insurance policy, the ~~Owner-Manager~~ and Contractor waive all rights against (1) each other and any of their subcontractors, suppliers, agents, and employees, each of the other; and (2) the ~~Architect, Architect’s-CM/PM, CM/PM’s~~ consultants, and any of their agents and employees, for damages caused by fire or other causes of loss to the extent those losses are covered by property insurance or other insurance applicable to the Project, except such rights as they have to the proceeds of such insurance.

[§ 5.6 All of the insurance in Article 5 shall be subject to the following terms, conditions and endorsements.](#)

[§ 5.6.1 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 Company.

[§ 5.6.2 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.

[§ 5.6.3 Primary Insurance.](#) The commercial general liability insurance under Section 5.1.1, the automobile liability insurance under Section 5.1.2 shall apply as primary insurance, without any right of contribution by any other insurance that may be carried by the Company regarding the Work under this Agreement. Any general liability or automobile liability insurance purchased by the Indemnitees is, or has been, specifically purchased as excess over any general liability or automobile liability purchased by the Contractor.

[§ 5.6.4 Severability of Interest.](#) The insurance shall include a severability of interest clause for all named insureds and additional insureds.

[§ 5.6.5 Duration.](#) Coverage shall be maintained, without interruption, from the date of commencement of the Contractor’s Services under this Agreement and shall continue for a period of three (3) 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.

§ 5.6.6 Notice of Cancellation, Etc. The Contractor's insurer shall give the Company 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 Contractor 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.

§ 5.6.7 Defense. The insurance obtained by the Contractor, 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.

§ 5.6.8 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 Contractor's Services. The Contractor's certificate of insurance shall be endorsed as follows: "The Company Indemnitees (as defined in Section 5.1.5) 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 Contractor shall annually submit certificates of insurance evidencing continuation of such coverage. The Contractor shall submit copies of the policies within seven (7) days following a request from the Manager.

§ 5.6.9 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.

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

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

§ 5.7 Waivers of Subrogation

The CM/PM and the Company 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 CM/PM agrees to defend and indemnify the Indemnitees from all such subrogation claims.

§ 5.8 Payment and Performance Bonds

The Manager shall have the right to require the Contractor 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 Contractor shall provide surety bonds as follows:

The Manager shall be named as obligees on all bonds. Bonds to be provided by the Contractor, 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.](#)

ARTICLE 6 GENERAL PROVISIONS

§ 6.1 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 written modification in accordance with Article 10.

§ 6.2 The Work

The term "Work" means the construction and services required by the Contract Documents, and includes all other labor, materials, equipment, and services provided, or to be provided, by the Contractor to fulfill the Contractor's obligations.

§ 6.3 Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all.

§ 6.4

~~Ownership and Use of Architect's Drawings, Specifications and Other Documents~~ [Managership and Use of Architect or Engineer's Drawings, Specifications and Other Documents](#)

Documents prepared by ~~the Architect~~ [are instruments of the Architect's-an Architect or Engineer, if any, are instruments of the Architect or Engineer's](#) service for use solely with respect to this Project. The Architect [or Engineer](#) shall retain all common law, statutory, and other reserved rights, including the copyright. The Contractor, subcontractors, sub-subcontractors, and suppliers are authorized to use and reproduce the instruments of service solely and exclusively for execution of the Work. The instruments of service may not be used for other Projects or for additions to this Project outside the scope of the Work without the specific written consent of the ~~Architect~~ [Architect or Engineer.](#)

§ 6.5 Electronic Notice

Written notice under this Agreement may be given by one party to the other by email as set forth below. (Insert requirements for delivering written notice by email such as name, title, and email address of the recipient, and whether and how the system will be required to generate a read receipt for the transmission.)

«[To Manager:](#)

[Teri Orton, Chief Procurement Officer](#)
[AEG/Hawaii Convention Center](#)
[1801 Kalakaua Avenue](#)
[Honolulu, Hawaii 96815](#)
[Email: \[hccrfp@hccasm.com\]\(mailto:hccrfp@hccasm.com\)](#)

With a copy to:

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

[To Contractor:](#)

[TBD Name, TBD Title](#)
[TBD](#)
[TBD](#)
[Email: TBD»](#)

ARTICLE 7 — OWNER

§ 6.6 Dispute Resolution

§ 6.6.1 Meet and Confer

In the event of a dispute involving terms or performance of this Contract, the Parties agree to initially attempt to resolve the dispute through a meet and confer process. The aggrieved Party shall submit information regarding the nature of the dispute to the other Party at the addresses listed herein. Upon receipt of any such notice, decision-making representatives of the Parties shall meet and confer in person in an effort to resolve such dispute. In the event that the dispute is not resolved through this informal process, the Parties may attempt, but are not required, to resolve the dispute through mediation. If the Parties do not both agree to submit the dispute to mediation, then the dispute shall be resolved through litigation as provided herein.

§ 6.6.2 Mediation

The Parties may mediate disputes, but only if both Parties agree to use mediation. In the event mediation is utilized, the Party seeking mediation shall send a notice to the other Party, setting forth the nature of the controversy, the dollar amount involved, if any, and the remedy sought. There shall be one mediator. The Parties shall conduct the mediation through Dispute, Prevention & Resolution, Inc. ("DPR") and shall select a mediator from the DPR Panel. The cost of the mediator and the mediation shall be borne equally by the Parties and the mediation shall take place in Honolulu, Hawaii. In the event mediation is not successful, the dispute shall be resolved through litigation.

§ 6.6.3 Continued Performance

Pending the final resolution of any dispute, Contractor shall continue to perform the undisputed Work required by the Contract, and Manager shall continue to pay all amounts due that are not subject to the dispute.

ARTICLE 7 — MANAGER

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

~~§ 7.1.1~~ § 7.1.1 If requested by the Contractor, the ~~Owner~~Manager shall furnish all necessary surveys and a legal description of the site.

~~§ 7.1.2~~ § 7.1.2 Except for permits and fees under Section 8.7.1 that are the responsibility of the Contractor, the ~~Owner~~Manager shall obtain and pay for other necessary approvals, easements, assessments, and charges.

~~§ 7.1.3~~ § 7.1.3 ~~Prior to commencement of the Work, at the written request of the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence.~~Intentionally deleted.

§ 7.2 Owner's Right to Stop the Work~~Manager's Right to Stop the Work~~

~~§ 7.2.1~~ § 7.2.1 If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the ~~Manager~~Manager may direct the Contractor in writing to stop the Work until the correction is made.

~~If the Contractor fails to correct Work which is not in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work until the correction is made.~~§ 7.2.2 ~~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.~~

§ 7.3 Owner's Right to Carry Out the Work~~Manager's Right to Carry Out the Work~~

~~If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven (7) 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, correct such deficiencies. In such case, the Architect-CM/PM may withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner-Manager for the cost of correction, provided the actions of the Owner-Manager and amounts charged to the Contractor were approved by the Architect-CM/PM.~~

§ 7.4

Owner's Right to Perform Construction and to Award Separate Contracts/Manager's Right to Perform Construction and to Award Separate Contracts

§ 7.4.1 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.

§ 7.4.2 The Contractor shall coordinate and cooperate with the Owner's-Manager's own forces and separate contractors employed by the Owner-Manager.

ARTICLE 8 CONTRACTOR

§ 8.1 Review of Contract Documents and Field Conditions by Contractor

§ 8.1.1 Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

§ 8.1.2 The Contractor shall carefully study and compare the Contract Documents with each other and with information furnished by the Owner-Manager. Before commencing activities, the Contractor shall (1) take field measurements and verify field conditions; (2) carefully compare this and other information known to the Contractor with the Contract Documents; and (3) promptly report errors, inconsistencies, or omissions discovered to the Architect-CM/PM.

§ 8.2 Contractor's Construction Schedule

The Contractor, promptly after being awarded the Contract, shall ~~prepare~~ and submit for the Owner's and Architect's-Manager's and CM/PM's information a Contractor's construction schedule for the Work. Said Contractor's construction schedule shall comply with Manager's proposed installment schedule, which was attached as part of Appendix A to the RFP, and any subsequent amendments thereto, if any.

§ 8.3 Supervision and Construction Procedures

§ 8.3.1 The Contractor shall supervise and direct the Work using the Contractor's best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work.

§ 8.3.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner, Manager, through the Architect-CM/PM, the names of subcontractors or suppliers for each portion of the Work. The Contractor shall not contract with any subcontractor or supplier to whom the Owner or Architect-Manager or CM/PM have made a timely and reasonable objection.

§ 8.4 Labor and Materials

§ 8.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.

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

§ 8.5 Warranty

The Contractor warrants to the Owner and Architect-Manager and CM/PM that: (1) materials and equipment furnished under the Contract will be new and of good quality unless otherwise required or permitted by the Contract Documents; (2) the Work will be free from defects not inherent in the quality required or permitted; and (3) the Work will conform to the requirements of the Contract Documents. Any material or equipment warranties required by the Contract Documents shall be issued in the name of the Owner, Manager or shall be transferable to the Owner, Manager and shall commence in accordance with Section 12.5.

§ 8.5.1 Manufacturer's warranties and subcontractor's warranties shall not relieve the Contractor of any of its warranty obligations under the Contract Documents. All such manufacturers and subcontractor's warranties shall be assigned by Contractor to Manager at final payment of the Contract Sum.

§ 8.5.2 As Work required on warranty is the complete, rework, repair or replacement of Work not properly performed, or the result of defective material or workmanship, the Manager will not compensate the Contractor or subcontractors and material and equipment suppliers for the warranty Work.

§ 8.5.3 All warranty items are the responsibility of the Contractor. When warranty items occur, the Manager will notify the Contractor or appropriate subcontractor. The Contractor 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, the Contractor shall take any and all measures to resolve the warranty item(s) immediately and in no event more than twenty-four (24) hours after notification to Contractor of the same. This shall include the acceleration of labor, material and equipment, all to implement the resolution, regardless of cost. All costs associated with the resolution of the warranty issue(s) shall remain the responsibility of the Contractor.

§ 8.6 Taxes

The Contractor shall pay sales, consumer, use, and similar taxes that are legally required when the Contract is executed.

§ 8.7 Permits, Fees and Notices

§ 8.7.1 The Contractor shall obtain and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work.

§ 8.7.2 The Contractor shall comply with and give notices required by agencies having jurisdiction over the Work. If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume full responsibility for such Work and shall bear the attributable costs. The Contractor shall promptly notify the Architect-CM/PM in writing of any known inconsistencies in the Contract Documents with such governmental laws, rules, and regulations.

§ 8.8 Submittals

The Contractor shall promptly review, approve in writing, and submit to the Architect-CM/PM shop drawings, product data, samples, and similar submittals required by the Contract Documents. Shop drawings, product data, samples, and similar submittals are not Contract Documents.

§ 8.9 Use of Site

The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits, the Contract Documents, and the Owner-Manager. Contractor and all Contractor's employees on the Manager's premises shall also conform to Manager's Health & Safety Procedures which was attached as part of Appendix E to the RFP.

§ 8.10 Cutting and Patching

The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.

§ 8.11 Cleaning Up

The Contractor shall keep the premises and surrounding area free from accumulation of debris and trash related to the Work. At the completion of the Work, the Contractor shall remove its tools, construction equipment, machinery, and surplus material; and shall properly dispose of waste materials.

§ 8.12 Indemnification

~~To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents 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, 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), but only to the extent caused by the negligent acts or omissions of the Contractor, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.~~

ARTICLE 9 — ARCHITECT

§ 8.12 Indemnification

§ 8.12.1 To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Manager Indemnitees (as defined in Section 5.1.5 herein), from and against any and all claims, loss, cost, damage, injury (including, without limitation, injury to or death of an employee of the Contractor 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 Contractor, any sub-consultant or contractor, anyone directly or indirectly employed by them, or anyone that they control, unless due to the gross negligence or willful misconduct of the Manager 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 paragraph.

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

§ 8.12.3 The Contractor shall also indemnify, defend and hold harmless all Manager 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 Manager Indemnitees of articles or services to be supplied in the performance of the Contractor'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.

ARTICLE 9 CM/PM

§ 9.1 The ~~Architect~~CM/PM will provide administration of the Contract as described in the Contract Documents. The ~~Architect~~CM/PM will have authority to act on behalf of the ~~Owner~~Manager only to the extent provided in the Contract Documents.

§ 9.2 The ~~Architect~~CM/PM will visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the Work.

§ 9.3 The ~~Architect~~CM/PM will not have control over or charge of, and will not be responsible for, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's responsibility. The ~~Architect~~CM/PM will not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

§ 9.4 Based on the ~~Architect's~~CM/PM's observations and evaluations of the Contractor's Applications for Payment, the ~~Architect~~CM/PM will review and certify the amounts due the Contractor.

§ 9.5 The ~~Architect~~CM/PM has authority to reject Work that does not conform to the Contract Documents.

§ 9.6 The ~~Architect~~CM/PM will promptly review and approve or take appropriate action upon Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

§ 9.7 On written request from either the ~~Owner~~Manager or Contractor, the ~~Architect~~CM/PM will promptly interpret and decide matters concerning performance under, and requirements of, the Contract Documents.

§ 9.8 Interpretations and decisions of the ~~Architect~~CM/PM will be consistent with the intent of, and reasonably inferable from the Contract Documents, and will be in writing or in the form of drawings. When making such interpretations and decisions, the ~~Architect~~CM/PM will endeavor to secure faithful performance by both ~~Owner~~Manager and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 9.9 The ~~Architect's-CM/PM's~~ duties, responsibilities, and limits of authority as described in the Contract Documents shall not be changed without written consent of the ~~Owner, Manager, Contractor, and Architect-CM/PM.~~ Consent shall not be unreasonably withheld.

ARTICLE 10 CHANGES IN THE WORK

§ 10.1 The ~~Owner, Manager,~~ without invalidating the Contract, may order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions, and the Contract Sum and Contract Time shall be adjusted accordingly, in writing. If the ~~Owner-Manager~~ and Contractor cannot agree to a change in the Contract Sum, the ~~Owner-Manager~~ shall pay the Contractor its actual ~~cost-plus-cost-plus~~ reasonable overhead and profit.

§ 10.2 The ~~Architect-CM/PM~~ may authorize or order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Such authorization or order shall be in writing (on an AIA G701-2017 Change Order form) and shall be binding on the ~~Owner-Manager~~ and Contractor. The Contractor shall proceed with such minor changes promptly.

§ 10.3 If concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time shall be subject to equitable adjustment.

ARTICLE 11 TIME

§ 11.1 Time limits stated in the Contract Documents are of the essence of the Contract.

§ 11.2 If the Contractor is delayed at any time in progress of the Work by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, or other causes beyond the Contractor's control, the Contract Time shall be subject to equitable adjustment.

§ 11.3 Costs caused by delays or by improperly timed activities or defective construction shall be borne by the responsible party.

ARTICLE 12 PAYMENTS AND COMPLETION

§ 12.1 Contract Sum

The Contract Sum stated in this Agreement, including authorized adjustments, is the total amount payable by the ~~Owner-Manager~~ to the Contractor for performance of the Work under the Contract Documents.

§ 12.2 Applications for Payment

§ 12.2.1 At least ten (10) days before the date established for each progress payment, the Contractor shall submit to the ~~Architect-CM/PM~~ an itemized Application for Payment for Work completed in accordance with the values stated in this Agreement. The Application shall be supported by data substantiating the Contractor's right to payment as the ~~Owner or Architect-Manager or CM/PM~~ may reasonably require, such as evidence of payments made to, and waivers of liens from, subcontractors and suppliers. Payments shall be made on account of 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 stored, and protected from damage, off the site at a location agreed upon in writing.

§ 12.2.2 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the ~~Owner Manager~~ no later than the time of payment. The Contractor 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 Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or other encumbrances adverse to the ~~Owner's-Manager's~~ interests.

§ 12.3 Certificates for Payment

The ~~Architect-CM/PM~~ will, within seven (7) days after receipt of the Contractor's Application for Payment, either (1) issue to the ~~Owner-Manager~~ a Certificate for Payment in the full amount of the Application for Payment, with a copy to the Contractor; (2) issue to the ~~Owner-Manager~~ a Certificate for Payment for such amount as the ~~Architect-CM/PM~~ determines is properly due, and notify the Contractor and ~~Owner-Manager~~ in writing of the ~~Architect's-CM/PM's~~ reasons for withholding certification in part; or (3) withhold certification of the entire Application for Payment, and

notify the Contractor and Owner-Manager of the Architect's-CM/PM's reason for withholding certification in whole. If certification or notification is not made within such seven-day-seven-day period, the Contractor may, upon seven (7) additional days' written notice to the Owner and Architect, Manager and CM/PM, stop the Work until payment of the amount owing has been received. The Contract Time and the Contract Sum shall be equitably adjusted due to the delay.

§ 12.4 Progress Payments

§ 12.4.1 After the Architect-CM/PM has issued a Certificate for Payment, the Owner-Manager shall make payment in the manner provided in the Contract Documents.

§ 12.4.2 The Contractor shall promptly pay each subcontractor and supplier, upon receipt of payment from the Owner, Manager, an amount determined in accordance with the terms of the applicable subcontracts and purchase orders.

§ 12.4.3 Neither the Owner-Manager nor the Architect-CM/PM shall have responsibility for payments to a subcontractor or supplier.

§ 12.4.4 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 requirements of the Contract Documents.

§ 12.5 Substantial Completion

§ 12.5.1 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 Contract Documents so the Owner-Manager can occupy or utilize the Work for its intended use.

§ 12.5.2 When the Contractor believes that the Work or designated portion thereof is substantially complete, it will notify the Architect-CM/PM and the Architect-CM/PM will make an inspection to determine whether the Work is substantially complete. When the Architect-CM/PM determines that the Work is substantially complete, the Architect-CM/PM shall prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, establish the responsibilities of the Owner-Manager and Contractor, and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract 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.

§ 12.6 Final Completion and Final Payment

§ 12.6.1 Upon receipt of a final Application for Payment, the Architect-CM/PM will inspect the Work. When the Architect-CM/PM finds the Work acceptable and the Contract fully performed, the Architect-CM/PM will promptly issue a final Certificate for Payment.

§ 12.6.2 Final payment shall not become due until the Contractor submits to the Architect-CM/PM releases and waivers of liens, and data establishing payment or satisfaction of obligations, such as receipts, claims, security interests, or encumbrances arising out of the Contract.

§ 12.6.3 Acceptance of final payment by the Contractor, a subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE 13 PROTECTION OF PERSONS AND PROPERTY

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs, including all those required by law in connection with performance of the Contract. The Contractor shall take reasonable precautions to prevent damage, injury, or loss to employees on the Work and other persons who may be affected thereby, the Work and materials and equipment to be incorporated therein, and other property at the site or adjacent thereto. The Contractor shall promptly remedy damage and loss to property caused in whole or in part by the Contractor, or by anyone for whose acts the Contractor may be liable.

ARTICLE 14 CORRECTION OF WORK

§ 14.1 The Contractor shall promptly correct Work rejected by the Architect-CM/PM as failing to conform to the requirements of the Contract Documents. The Contractor shall bear the cost of correcting such rejected Work, including the costs of uncovering, replacement, and additional testing.

§ 14.2 In addition to the Contractor's other obligations including warranties under the Contract, the Contractor shall, for a period of one (1) year after Substantial Completion, correct work-Work not conforming to the requirements of the Contract Documents.

§ 14.3 If the Contractor fails to correct nonconforming Work within a reasonable time, the Owner-Manager may correct it in accordance with Section 7.3.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Assignment of Contract

~~Neither party to the Contract shall assign the Contract as a whole without written consent of the other. The Manager is currently operating the Hawaii Convention Center pursuant to a Management Agreement with the Hawai'i Tourism Authority ("HTA"). In the event that the Manager's Management Agreement with HTA is terminated for any reason, or expires pursuant to its terms, then the Contractor agrees to enter into an assignment from Manager to either (1) HTA, or (2) the new manager of the Hawaii Convention Center. In the event of an assignment from Manager to the HTA or the new manager, the Contractor agrees to continue providing the goods and services required by this Agreement, and continues to be bound by all the terms and provisions herein. In the event on this Agreement is assigned to the HTA, the Contractor agrees that the assignment will add requirements that the Contractor must follow State contracting laws, including, but not limited to, the Hawaii State Procurement Code.~~

§ 15.2 Tests and Inspections

§ 15.2.1 At the appropriate times, the Contractor shall arrange and bear cost of tests, inspections, and approvals of portions of the Work required by the Contract Documents or by laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 15.2.2 If the Architect-CM/PM requires additional testing, the Contractor shall perform those tests.

§ 15.2.3 The Owner-Manager shall bear cost of tests, inspections, or approvals that do not become requirements until after the Contract is executed. The Owner-Manager shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 15.3 Governing Law

The Contract shall be governed by the ~~law of the place where the Project is located, laws of the State of Hawaii,~~ excluding that jurisdiction's choice of law rules. The Contractor shall comply with all applicable Federal, State and Local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits). The Contractor shall assure that all operations incident to the Work contemplated under this Contract shall be performed with qualified personnel, properly licensed and trained in accord with established regulatory standards, laws, ordinances and regulations.

ARTICLE 16 TERMINATION OF THE CONTRACT

§ 16.1 Termination by the Contractor

If the Work is stopped under Section 12.3 for a period of 14-fourteen (14) days through no fault of the Contractor, the Contractor may, upon seven (7) additional days' written notice to the ~~Owner and Architect, Manager and CM/PM,~~ terminate the Contract and recover from the Owner-Manager payment for Work executed including reasonable overhead and profit, and costs incurred by reason of such termination.

§ 16.2 ~~Termination by the Owner for Cause~~ Termination by the Manager for Cause

§ 16.2.1 The Owner-Manager may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or

.4 is otherwise guilty of substantial breach of a provision of the Contract Documents.

§ 16.2.2 When any of the above reasons exist, the Owner-Manager, after consultation with the Architect, CM/PM, may without prejudice to any other rights or remedies of the Owner-Manager and after giving the Contractor and the Contractor's surety, if any, seven (7) days' written notice, terminate employment of the Contractor and may

- .1 take possession of the site and of all materials thereon owned by the Contractor, and
- .2 finish the Work by whatever reasonable method the Owner-Manager may deem expedient.

§ 16.2.3 When the Owner-Manager terminates the Contract for one of the reasons stated in Section 16.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 16.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, such excess shall be paid to the Contractor. If such costs exceed the unpaid balance, the Contractor shall pay the difference to the Owner-Manager. This obligation for payment shall survive termination of the Contract.

§ 16.3 ~~Termination by the Owner for Convenience~~ Termination by the Manager for Convenience

The Owner-Manager may, at any time, terminate the Contract for the Owner's-Manager's convenience and without cause. The Contractor 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.

ARTICLE 17 OTHER TERMS AND CONDITIONS

(Insert any other terms or conditions below.)

<< >>

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

(If required by law, insert cancellation period, disclosures or other warning statements above the signatures.)

<< >>

OWNER-MANAGER *(Signature)*

«Teri Orton», «Chief Procurement Officer»

(Printed name and ~~title~~-title)

CONTRACTOR *(Signature)*

«TBD», «TBD»

(Printed name and ~~title~~-title)

LICENSE NO.:

JURISDICTION:

APPENDIX C

AIA Document A105 – 2014

Exhibit A: AIA Document A312 – 2010, Exhibit A: Payment Bond

Exhibit B: AIA Document A312 – 2010, 2014, Exhibit B: Performance Bond

Exhibit C: Special Conditions

Exhibit D: General Conditions

DO NOT EXECUTE

DRAFT AIA® Document A312® - 2010

Payment Bond

CONTRACTOR:

(Name, legal status and address)

«TBD»
«TBD»
«TBD»

SURETY:

(Name, legal status and principal place of business)

«TBD»
«TBD»
«TBD»

OWNER/MANAGER:

(Name, legal status and address)

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

CONSTRUCTION CONTRACT

Date: «TBD»

Amount: \$ «\$TBD»

Description:

(Name and location)

«Parking Lot Floor Sealing Project»
«Hawaii Convention Center ("HCC")»
1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

BOND

Date:

(Not earlier than Construction Contract Date)

«TBD»

Amount: \$ «Contract Sum»

Modifications to this Bond: None See Section 18

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Payment Bond.)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

«TBD»
«TBD»
«TBD»

OWNER'S/MANAGER'S**REPRESENTATIVE:**

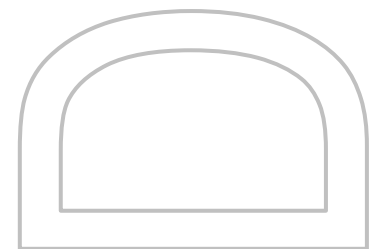
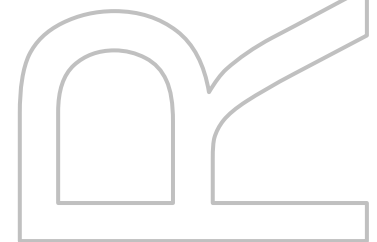
(Architect, Engineer or other party:)

«Teri Orton, Chief Procurement
Officer»
«AEG/Hawaii Convention Center»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»
«Email: hccrfp@hccasm.com»
« »

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.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner-Manager to pay for labor, materials and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.

§ 2 If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies and holds harmless the Owner-Manager from claims, demands, liens or suits by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.

§ 3 If there is no Owner-Manager Default under the Construction Contract, the Surety's obligation to the Owner-Manager under this Bond shall arise after the Owner-Manager has promptly notified the Contractor and the Surety (at the address described in Section 13) of claims, demands, liens or suits against the Owner-Manager or the Owner's Manager's property by any person or entity seeking payment for labor, materials or equipment furnished for use in the performance of the Construction Contract and tendered defense of such claims, demands, liens or suits to the Contractor and the Surety.

§ 4 When the Owner-Manager has satisfied the conditions in Section 3, the Surety shall promptly and at the Surety's expense defend, indemnify and hold harmless the Owner-Manager against a duly tendered claim, demand, lien or suit.

§ 5 The Surety's obligations to a Claimant under this Bond shall arise after the following:

§ 5.1 Claimants, who do not have a direct contract with the Contractor,

- .1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
- .2 have sent a Claim to the Surety (at the address described in Section 13).

§ 5.2 Claimants, who are employed by or have a direct contract with the Contractor, have sent a Claim to the Surety (at the address described in Section 13).

§ 6 If a notice of non-payment required by Section 5.1.1 is given by the Owner-Manager to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Section 5.1.1.

§ 7 When a Claimant has satisfied the conditions of Sections 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:

§ 7.1 Send an answer to the Claimant, with a copy to the Owner-Manager, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and

§ 7.2 Pay or arrange for payment of any undisputed amounts.

§ 7.3 The Surety's failure to discharge its obligations under Section 7.1 or Section 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Section 7.1 or Section 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.

§ 8 The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Section 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.

§ 9 Amounts owed by the Owner-Manager to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner-Manager accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's-Manager's priority to use the funds for the completion of the work.

§ 10 The Surety shall not be liable to the Owner-Manager, Claimants or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner-Manager shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to, or give notice on behalf of, Claimants or otherwise have any obligations to Claimants under this Bond.

§ 11 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 12 No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Section 5.1.2 or 5.2, or (2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 13 Notice and Claims to the Surety, the Owner-Manager or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.

§ 14 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 15 Upon request by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner-Manager shall promptly furnish a copy of this Bond or shall permit a copy to be made.

§ 16 Definitions

§ 16.1 Claim. A written statement by the Claimant including at a minimum:

- .1 the name of the Claimant;
- .2 the name of the person for whom the labor was done, or materials or equipment furnished;
- .3 a copy of the agreement or purchase order pursuant to which labor, materials or equipment was furnished for use in the performance of the Construction Contract;
- .4 a brief description of the labor, materials or equipment furnished;
- .5 the date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
- .6 the total amount earned by the Claimant for labor, materials or equipment furnished as of the date of the Claim;
- .7 the total amount of previous payments received by the Claimant; and
- .8 the total amount due and unpaid to the Claimant for labor, materials or equipment furnished as of the date of the Claim.

§ 16.2 Claimant. An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials or equipment for use in the performance of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms "labor, materials or equipment" that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials or equipment were furnished.

§ 16.3 Construction Contract. The agreement between the Owner-Manager and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

§ 16.4 **Owner-Manager Default.** Failure of the Owner-Manager, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 16.5 **Contract Documents.** All the documents that comprise the agreement between the Owner-Manager and Contractor.

§ 17 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner-Manager shall be deemed to be Contractor.

§ 18 Modifications to this bond are as follows:

<< >>

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____ (Corporate Seal)

SURETY

Company: _____ (Corporate Seal)

Signature: _____

Name and Title: <TBD> <TBD>

Address: <TBD>

Signature: _____

Name and Title: <TBD> <TBD>

Address: <TBD>

DRAFT AIA® Document A312® - 2010

Performance Bond

CONTRACTOR:

(Name, legal status and address)

«TBD»
«TBD»
«TBD»

SURETY:

(Name, legal status and principal place of business)

«TBD»
«TBD»
«TBD»

OWNER/MANAGER:

(Name, legal status and address)

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

CONSTRUCTION CONTRACT

Date: «TBD»

Amount: \$ «\$TBD»

Description:

(Name and location)

«Parking Lot Floor Sealing Project»
«Hawaii Convention Center ("HCC")»
1801 Kalakaua Avenue
Honolulu, Hawaii 96815»

BOND

Date:

(Not earlier than Construction Contract Date)

«TBD»

Amount: \$ «Contract Sum»

Modifications to this Bond: None See Section 16

CONTRACTOR AS PRINCIPAL

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(Any additional signatures appear on the last page of this Performance Bond.)

SURETY

Company: (Corporate Seal)

Signature:

Name and « »

Title:

(FOR INFORMATION ONLY — Name, address and telephone)

AGENT or BROKER:

«TBD»
«TBD»
«TBD»

OWNER'S/MANAGER'S**REPRESENTATIVE:**

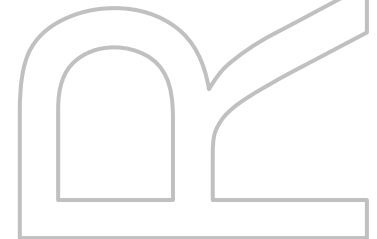
(Architect, Engineer or other party:)

«Teri Orton, Chief Procurement
Officer»
«AEG/Hawaii Convention Center»
«1801 Kalakaua Avenue»
«Honolulu, Hawaii 96815»
«Email: hccrfp@hccasm.com»
« »

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.

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.



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§ 1 The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns to the Owner-Manager for the performance of the Construction Contract, which is incorporated herein by reference.

§ 2 If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Section 3.

§ 3 If there is no Owner-Manager Default under the Construction Contract, the Surety's obligation under this Bond shall arise after

- .1 the Owner-Manager first provides notice to the Contractor and the Surety that the Owner-Manager is considering declaring a Contractor Default. Such notice shall indicate whether the Owner-Manager is requesting a conference among the Owner-Manager, Contractor and Surety to discuss the Contractor's performance. If the Owner-Manager does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's-Manager's notice, request such a conference. If the Surety timely requests a conference, the Owner-Manager shall attend. Unless the Owner-Manager agrees otherwise, any conference requested under this Section 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's-Manager's notice. If the Owner-Manager, the Contractor and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's-Manager's right, if any, subsequently to declare a Contractor Default;
- .2 the Owner-Manager declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and
- .3 the Owner-Manager has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

§ 4 Failure on the part of the Owner-Manager to comply with the notice requirement in Section 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

§ 5 When the Owner-Manager has satisfied the conditions of Section 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

§ 5.1 Arrange for the Contractor, with the consent of the Owner-Manager, to perform and complete the Construction Contract;

§ 5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

§ 5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner-Manager for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner-Manager and a contractor selected with the Owner's-Manager's concurrence, to be secured with performance and payment bonds executed by a qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner-Manager the amount of damages as described in Section 7 in excess of the Balance of the Contract Price incurred by the Owner-Manager as a result of the Contractor Default; or

§ 5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor and with reasonable promptness under the circumstances:

- .1 After investigation, determine the amount for which it may be liable to the Owner-Manager and, as soon as practicable after the amount is determined, make payment to the Owner-Manager; or
- .2 Deny liability in whole or in part and notify the Owner-Manager, citing the reasons for denial.

§ 6 If the Surety does not proceed as provided in Section 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner-Manager to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner-Manager shall be entitled to enforce any remedy available to the Owner-Manager. If the Surety proceeds as provided in Section 5.4, and the Owner-Manager refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner-Manager shall be entitled to enforce any remedy available to the Owner-Manager.

§ 7 If the Surety elects to act under Section 5.1, 5.2 or 5.3, then the responsibilities of the Surety to the Owner-Manager shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner-Manager to the Surety shall not be greater than those of the Owner-Manager under the Construction Contract. Subject to the commitment by the Owner-Manager to pay the Balance of the Contract Price, the Surety is obligated, without duplication, for

- .1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;
- .2 additional legal, design professional and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Section 5; and
- .3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

§ 8 If the Surety elects to act under Section 5.1, 5.3 or 5.4, the Surety's liability is limited to the amount of this Bond.

§ 9 The Surety shall not be liable to the Owner-Manager or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner-Manager or its heirs, executors, administrators, successors and assigns.

§ 10 The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders and other obligations.

§ 11 Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this Paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

§ 12 Notice to the Surety, the Owner-Manager or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

§ 13 When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

§ 14 Definitions

§ 14.1 **Balance of the Contract Price.** The total amount payable by the Owner-Manager to the Contractor under the Construction Contract after all proper adjustments have been made, including allowance to the Contractor of any amounts received or to be received by the Owner-Manager in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

§ 14.2 **Construction Contract.** The agreement between the Owner-Manager and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

§ 14.3 **Contractor Default.** Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

§ 14.4 **Owner-Manager Default.** Failure of the Owner-Manager, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

§ 14.5 Contract Documents. All the documents that comprise the agreement between the Owner-Manager and Contractor.

§ 15 If this Bond is issued for an agreement between a Contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner-Manager shall be deemed to be Contractor.

§ 16 Modifications to this bond are as follows:

<< >>

(Space is provided below for additional signatures of added parties, other than those appearing on the cover page.)

CONTRACTOR AS PRINCIPAL

Company: _____
(Corporate Seal)

SURETY

Company: _____
(Corporate Seal)

Signature:

Name and Title: <<TBD>> <<TBD>> _____

Address: <<TBD>> _____

Signature:

Name and Title: <<TBD>><<TBD>> _____

Address: <<TBD>> _____

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.

GENERAL CONDITIONS

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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.

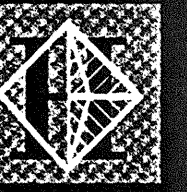
In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

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.

APPENDIX G

Exhibit C: HCC Overall Parking Level Plan (Sheet A2.0.3)



Hawai'i Convention Center

Convention Center Authority
Honolulu, HI

Wimberly Allison Tong & Goo, Inc.
Honolulu, HI

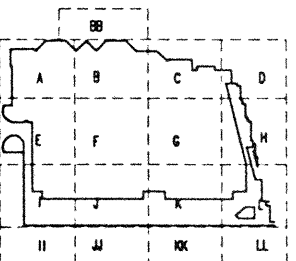
in association with

Loschky Marquardt & Nesholm
Seattle, WA

NORDIC / PCL
A Joint Venture
Honolulu, HI

Consultants

This work was prepared by me or under my supervision and construction of this project will be under my observation.
Ernest W. Wank
Ernest W. Wank
Licensed Professional Architect
No. 5343
HAWAII, U.S.A.
Information is defined in Title 19, Chapter 10, Section 1705 of the Rules and Regulations of the Board of Professional Engineers, Architects and Surveyors of the State of Hawaii.



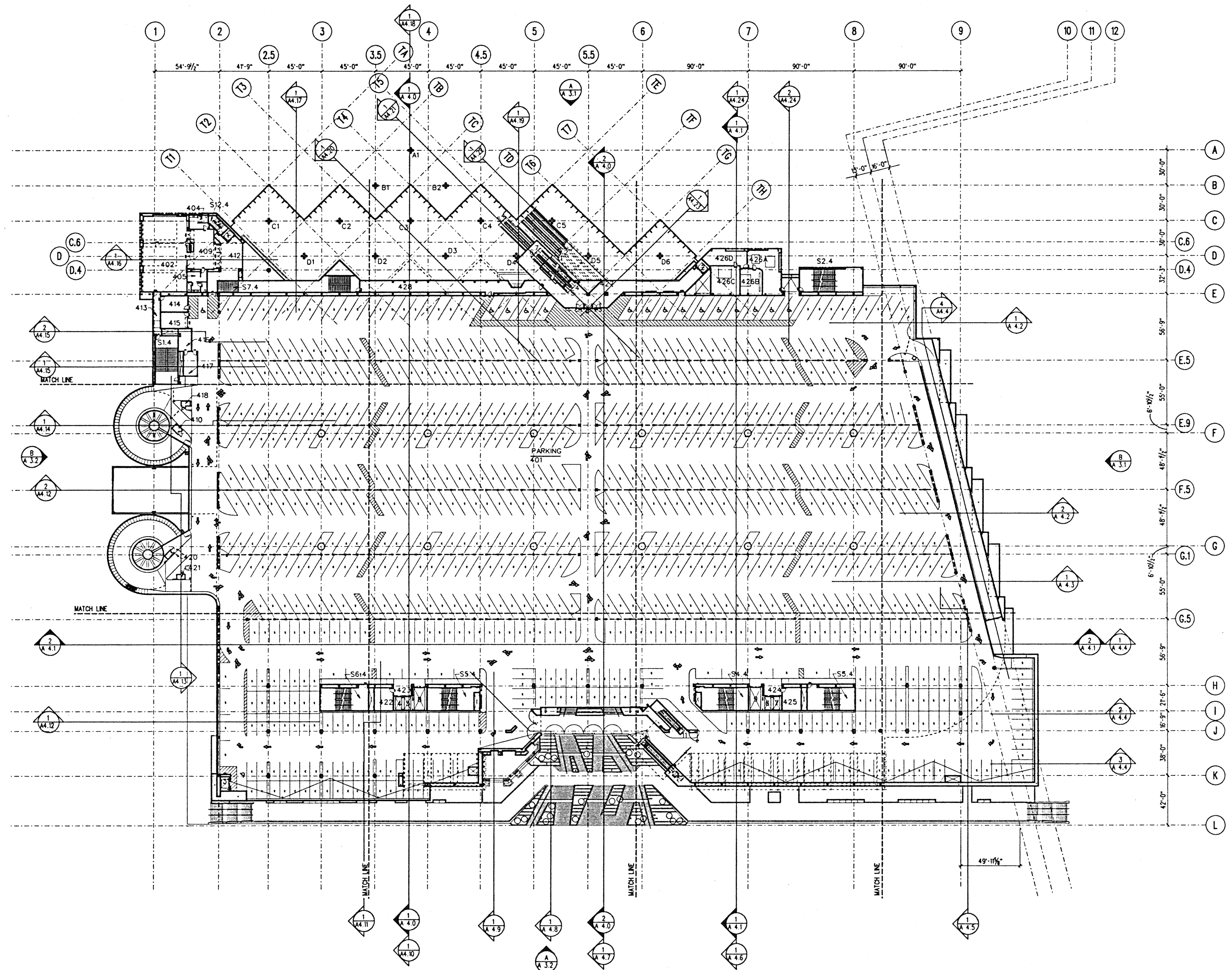
Revisions

No.	Date	By	Description
12-15-95			FINAL DOCUMENTS
10-17-95			OCTOBER COORDINATION
9-15-95			BUILDING PERMIT SET

Sheet Title

PARKING LEVEL OVERALL FLOOR PLAN

Designed	GL, KNPC
Drawn	TM, RFR, ML, BT, DJ
Checked	RZ, OR, HM
Date	8-14-95
Job No.	89008.02.9
Sheet No.	



PARKING SUMMARY

STANDARD SPACES (S)	464
COMPACT SPACES (C)	320
ACCESSIBLE SPACES	16
TOTAL SPACES	800

PARKING LEVEL PLAN
1/32" = 1'-0" EL. + 42'-0"

