

REQUEST FOR BIDS
TREE TRIMMING
AT THE HAWAII CONVENTION CENTER
HONOLULU, HAWAI'I
RFB 2024-16
March 2024

Proposal Due Date: March 25, 2024
For Information, Contact: Noelle Liew
HCC's Contracting Officer at hccrfp@hccasm.com

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Request for Bids for
Tree Trimming
for the Hawai'i Convention Center

1. PURPOSE/OBJECTIVE

AEG Management HCC, LLC ("HCC") is seeking to obtain bids from vendors to perform the scope of services as outlined in Exhibit 1 – Coconut Palms and Exhibit 2 – Trees, other than coconut palms, for the Hawai'i Convention Center.

2. CONDITIONS AND LIMITATIONS

The bids and any information provided by prospective vendors shall be made a part of HCC's official files without obligation on HCC's part to return them to the original vendor ("vendor, bidder or supplier").

This request for bids ("RFB") and the selected vendor's responses may, by reference, become part of the formal Agreement for Goods and Services between the HCC and the selected vendor resulting from this solicitation.

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

3. SCOPE OF PROCUREMENT

The HCC is seeking bids/quotes to perform the scope of services as outlined in Appendix A – Coconut Palms and Appendix B – Other Trees, other than coconut palms, for the Hawai'i Convention Center.

HCC has the right to use more than one vendor.

The Bidder(s) shall submit Appendix C - Bid Form – Rate Card, company background, terms and a service schedule to complete the scope of services.

All work must be phased around the HCC event schedule to minimize HCC's operation impacts and shutdown periods. The Bidder must notify and coordinate with HCC all shutdown periods or anticipated impacts to HCC.

4. BID EVALUATION and AWARD

Bids shall be submitted on Appendix C - Bid Form – Rate Card.

Bids/quotes shall be submitted by March 25, 2024 by 2:00pm, HST to hccrfp@hccasm.com. Bids shall be evaluated based on evaluation criteria. Bids/quotes that are deemed non-responsive may be rejected.

<u>Evaluation Criteria</u>	<u>Value / Weight</u>
Company background	20%
Meets scope of services	40%
Cost Proposal	40%

5. TIMELINE OF THIS PROCUREMENT

The following is the proposed timetable for this procurement. The HCC reserves the right to adjust this timetable as it deems necessary throughout the course of this procurement.

Issue Request for Bids/Quotes	March 4, 2024
Questions regarding bid/quote proposal	March 11, 2024
HCC's response to questions, and issuance of addendum, if necessary	March 18, 2024
Bids/quotes due date	March 25, 2024, 2:00 pm
Award Contract	April 2024
Execution of Agreement for Goods and Services	April 2024

6. INVOICING

Upon award of the contract the vendor shall execute an Agreement for Goods and Services, provided as Appendix E in this RFB, which will set forth the specific obligations of the vendor and payment process (i.e. terms and conditions). The Agreement for Goods and Services shall incorporate this document and the bids provided by vendor.

7. USE OF SUPPLIES AND EQUIPMENT

If the scope of work requires the vendor to utilize and operate HCC equipment, an "Agreement for Rental of Equipment", provided as Appendix H in this RFB, appropriate training and certification will be required before that equipment can be used. Rental rates may also apply.

8. RESERVATION OF RIGHTS

HCC reserves the right to reduce, amend, or expand the "Scope of Procurement" as provided herein.

9. SERVICE CONDUCT

A. GENERAL REQUIREMENTS

1. All work, services, or products provided pursuant to this procurement must comply with ALL applicable City and County of Honolulu, State of Hawaii, and Federal rules, regulations, codes, and guidelines.
2. HCC shall hold the vendor liable for all the acts of its employees.

3. Vendor shall ensure compliance with the Health & Safety Procedures – Section 1 –Contractor's Policy provided as Appendix D of this RFB.
4. Once the purchase contract is awarded, the vendor shall communicate directly with HCC's Point of Contact and vendor shall cooperate fully with HCC's Point of Contact in every way.
5. When a disagreement arises between the vendor and HCC regarding compliance with specifications and services required herein, the directives of HCC shall prevail. Vendor's failure to comply with HCC's directives shall be deemed cause for corrective action and subject to contractual remedies.
6. If the vendor discovers any discrepancy or inconsistency in the specifications, the vendor shall immediately notify HCC's Point of Contact before proceeding with providing a bid or quote, otherwise, the vendor will be held responsible for any cost involved in correction of such discrepancy.
7. If any equipment or goods supplied pursuant to this procurement is not in full compliance with these specifications, the vendor shall make all necessary corrections to the full satisfaction of HCC and at no additional cost to HCC. The vendor shall perform corrective work within the period allowed by HCC's Point of Contact.
8. The vendor shall immediately remedy any damages and defects caused by negligence of the vendor or its employees.
9. The vendor warrants that (1) materials and equipment furnished under the contract will be new and of good quality (2) any material or equipment warranties shall be issued in the name of the company (3) warranty period shall not be less than one (1) year for any item.

B. SAFE PERFORMANCE OF SERVICE

1. While providing goods and/or services while at the HCC, the vendor shall exercise due care and shall provide all necessary protection to prevent injury and/or damage.
2. The vendor shall be required to protect the HCC occupants and the public from any unsafe conditions while providing goods and/or services at the.
3. The vendor shall report all unsafe working conditions at HCC.
4. The vendor agrees to comply with all Federal Occupational Safety and Health (OSHA) and Hawai'i Occupational Safety and Health (HIOSH) laws, regulations, training, and reporting while providing goods and/or services at the HCC.

5. The Hawaii Occupational Safety and Health Law, Chapter 396, Hawaii Revised Statutes, effective May 16, 1972, as amended, is applicable and made a part of this solicitation by reference. The vendor/supplier shall carefully read and strictly comply with its requirements.

C. ORIENTATION, SUPERVISION AND TRAINING

The Vendor is responsible for providing adequate orientation, supervision and training of all employees who provide goods and/or services at the HCC. All employees must be familiar with the layout of HCC and the Health and Safety Procedures – Contractor's Policy, Appendix D, after this orientation.

D. IDENTIFICATION

All vendor's employees who will be at HCC longer than to drop off the equipment or goods, will be required to carry a supplier issued, picture ID which will be required to be always worn while working at the HCC. Supplier is to provide each employee with a plastic sleeve with clip to hold the ID and a lanyard. A HCC-issued identification badge or daily wristband will also be required to be always worn. This badge will be issued daily through the HCC Security Base office, upon check-in, and must be turned back in at the end of the labor shift, upon check-out at the HCC Security Base.

E. UNIFORMS

HCC requires vendor's employees to always wear proper work attire when on HCC property. Additionally, employees must wear closed-toe shoes as well as any necessary personal protective equipment.

F. PERFORMANCE AND DISCIPLINE

The performance of vendor's employees who serve HCC clients reflects directly upon the HCC. HCC reserves the right to monitor the vendor's employee's job performance at any time. In some cases, it may be necessary for the supplier to remove the employee from the facility as described herein.

10. REQUIREMENTS FOR AWARD OF CONTRACT

Prior to the execution of the Agreement, vendor/supplier must furnish proof of compliance with the requirements of HRS 103D-310(c), including, without limitation, the following:

- a. Chapter 237, tax clearance;
- b. Chapter 383, unemployment insurance;
- c. Chapter 386, worker's compensation;
- d. Chapter 392, temporary disability insurance;
- e. Chapter 393, prepaid health care; and
- f. Proof that Contractor is:
 - a. Registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawai'i business"; or
 - b. Registered to do business in the State, hereinafter referred to as a "compliant non-Hawai'i business".

Vendor must furnish a Certificate of Vendor Compliance and a certificate of insurance demonstrating compliance with any HRS vendor insurance requirements.

11. INDEMNIFICATION

Vendor agrees to indemnify, defend and forever save and hold harmless The Hawai'i Convention Center, ASM Global Parent Inc., AEG Venue Management Holdings, LLC, Hawai'i Tourism Authority, the State of Hawaii, and each of its and their respective boards, commissions, agents, owners, members, shareholders, directors, officers, servants, employees, subsidiaries, and affiliates (hereinafter referred to as "Company Indemnitees"), unless not permitted by applicable law. Employees and volunteers (sometimes collectively referred to herein as the "Company Indemnitees" and individually as a "Company Indemnitee"), from and against any and all damages, claims, losses, demands, costs, expenses (including attorneys, fees and costs), obligations, liens, liabilities, actions and causes of action, threatened or actual, which any one of the Company Indemnitees may suffer or incur arising directly or indirectly out of or in connection with the Goods, performance of the Services or the failure of supplier to perform the Services in accordance with the terms of this Agreement or any act or omission of the vendor/supplier, including its employees, officers, or agents. The foregoing indemnification shall survive any termination or the expiration of the term of this Agreement.

12. INSURANCE

Without in any way limiting or altering the indemnification requirements of vendor/supplier under or pursuant to this Agreement, vendor/supplier shall, at its sole expense, procure and at all times maintain during the relevant term of this Agreement for Goods and Services all of the following insurance:

- a. Vendor/Supplier agrees, at its sole expense, to procure and maintain during the Term of this Agreement: (i) Commercial General Liability insurance, on an occurrence form, including blanket contractual liability, products and completed operations coverage, fire legal liability coverage, personal & advertising injury coverage (including but not limited to libel, slander, defamation of character, and discrimination) for the mutual benefit of supplier, Company successors and assigns, against all claims for personal injury, death or property damage in or about the Areas arising in the amount of \$1,000,000 per occurrence, \$2,000,000 in the aggregate, (ii) Commercial Automobile Liability insurance, on an occurrence basis covering all owned, non-owned, hired and leased vehicles with a limit of not less than \$1,000,000 per occurrence covering bodily injury and property and physical damage; and (iii) following form Umbrella or Excess Liability coverage with a limit of \$5,000,000.
- b. The insurance policies set forth in (a) above shall name as Additional Insureds each of the Vendor Indemnitees (as set forth in Section 9 above), their respective affiliates, vendors, lenders, as well as each of their respective officers, directors, partners, members, shareholders, employees, agents, representatives, successors, and assigns. All such

insurance shall be primary and non-contributing to insurance maintained by vendor.

- c. Vendor agrees, at its sole expense, to procure and maintain during the term of this Agreement, Workers Compensation insurance in accordance with statutory limits and Employers Liability at a limit of \$1,000,000 per occurrence covering all employees, performers, participants and other personnel of supplier (other than such persons as are employed by supplier and its respective affiliates), which shall be evidenced on the certificate of insurance required to be provided in accordance with Section 10(f & g) below. Such insurance shall include a waiver of subrogation in favor of the vendor/supplier.
- d. To the extent applicable, vendor/supplier shall obtain and maintain a Personal Property Floater and/or Miscellaneous Equipment insurance coverage on all of supplier's personal property, trade fixtures, and supplier's owned alterations, utility installations and third-party property damage. Such insurance shall be full replacement cost coverage with a deductible of not more than \$2,500.00 per occurrence. The proceeds from any such insurance shall be used by supplier for the replacement of personal property, tools & equipment. Vendor/supplier shall provide Company with written evidence that such insurance is in force and shall causes its insurers to a waiver of subrogation in favor of Company.
- e. Company makes no representation that the limits or terms of coverage of insurance specified herein are adequate to cover supplier's property, business operations or obligations under this Agreement.
- f. The insurance shall provide for coverage from commencement of work or occupancy of the premises. There will be no charge to Company for such coverage and a certificate of insurance evidencing such coverage shall be furnished to Company. Said policy of insurance and endorsements shall provide that the policy of insurance cannot be canceled without 15 days prior written notification to Company. Said insurance shall not restrict or limit the coverage of the additional insureds. If vendor/supplier fails to provide the required certificate of insurance at least five (5) business days prior to the commencement of work or occupancy of premises, Company may, in its sole and absolute judgment, either (i) acquire, at vendor/supplier's expense, such insurance as Company determines in its sole judgment to be necessary in order to protect the Company Indemnitees from any of the matters to be covered under subparagraph (a) above, or (ii) treat such failure as a default by supplier and terminate the Agreement.
- g. All insurance shall be affected by valid and enforceable policies issued by insurers of responsibility, licensed to do business in the Hawaii, such responsibility, and the insuring agreements to meet with the reasonable approval of Company. An insurer with a current A.M. Best rating of at least AVI or better shall be deemed to be acceptable. Receipt by Company of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed

as a waiver or modification of the insurance requirements above or an implied agreement to modify same nor is any verbal agreement to modify same permissible or binding. Any agreement to amend this provision of this Agreement must be in writing signed by the parties.

- h. At the request, vendor/supplier shall promptly furnish loss information concerning all liability claims brought against company (or any other insured under company required policies), that may affect the amount of liability insurance available for the benefit and protection of the Company Indemnitees under this Agreement. Such loss information shall include such specifics and be in such form as Company.
- i. All insurance coverage available to vendor/supplier and any available proceeds in excess of specified minimum limits shall be available to Company.

APPENDIX A
COCONUT PALMS

Appendix A

Scope of Services

Coconut Palms

Contractor to perform the following Scope of Services, on an as needed basis:

Prune Coconut Palms on the perimeter of HCC property; estimated at 3-4 times per year, as requested through HCC Purchase Order.

a) Baseline Scope

- i) 85 coconut trees located on Kahakai Street, Atkinson Drive, Kapiolani Blvd., and Kalakaua Ave.
- ii) To include removal of fruit/seed pods, unhealthy and/or damaged branches, branches touching or interfering with any structure, adhere to industry standard 9 to 3 pruning wherever possible.
- iii) Provide a written health assessment of all trees, produced by a certified arborist, for each time the scope of service scheduled.
- iv) If the total number of tree units specified above changes by more than two trees, pricing may be re-negotiated at the discretion of HCC.

b) Alternative additive scope

- i) Full Tree Removal with stump grind. If requested.
- ii) Full Tree Removal cut to ground level and treatment with root killing chemical. If requested.
- iii) Stand-alone written health assessment of all trees, produced by a certified arborist, not associated with baseline scope of services. If requested.
- iv) Emergency work, less than 24-hours notification to the Contractor. If requested.
 - (1) Emergency work may include tree removal, branch removal, etc.
 - (2) Contractor is required to respond by phone or in-person to any HCC emergency call within eight (8) hours or less, and be able to be onsite for execution of work scope within an additional maximum of four (4) hours or less; Otherwise if these conditions are not met, scope will be billed at "Other work" classification.
 - (3) Effective 24 hours 7 days a week.
- v) Other work not specified, at an hourly rate.
 - (1) Additional service(s) may be deemed necessary that are not identified in the Scope of Services.
 - (2) HCC will require that the Contractor provide an estimate for the additional identified service(s) and HCC will issue a Purchase Order to provider before any additional service(s) are to commence.

c) Applicable to all scopes

- i) NO SPIKES ARE ALLOWED ON ANY PORTION OF THE TREES
- ii) Any work done on inaccessible trees is to be done with lifts.
- iii) Any work done on trees inaccessible to lifts needs to be done without spikes.
- iv) Contractor Supervisor, or equivalent, must be onsite for full duration of work.
- v) Scheduling of work
 - (1) To be completed in a maximum of two (2) working days.
 - (2) Work may or may not be scheduled on consecutive days due to events in the Facility.
- vi) Work to be done on Kahakai Street, Promenade, and Atkinson Drive, cannot start before 9:00am. Perimeter areas on Kapi'olani Blvd. and Kalākaua Ave. are acceptable to start earlier, with HCC pre-approval.
- vii) Removal of trash and debris
 - (1) Contractor is responsible for removal and hauling of all branches, leaves, fruits, etc. from the trees.
 - (2) Chipper cannot be run in the loading docks, nor may it be stationed out on Kahakai Drive.
- viii) Street and sidewalk amendments
 - (1) Any alteration to the path of traffic or sidewalk closures is the responsibility of the Contractor to obtain applicable permits with the City & County of Honolulu.
 - (2) All permits are to be supplied to HCC prior to the start of work.
- ix) All equipment used on sidewalks must be pre-approved by HCC, including but not limited to man lifts, lift trucks, and personal or work vehicles. Do not assume that equipment will be allowed on sidewalks.
- x) Additional Contractor Responsibilities
 - (1) Perform property inspections with HCC representative. During onsite work, constantly review and advise HCC of potential problems using foresight and experience to ward off future problems by taking a proactive approach.
 - (2) Maintain safe work practices as it relates to your industry.
 - (3) Any damage to the facility, its infrastructure, or its assets will be the Contractor's financial responsibility and subject to HCC's oversight and execution for the repair and/or replacement.
 - (4) Adhere to all of the Health & Safety Procedures, Section 1, Contractor Policy; Exhibit B

- i) NO SPIKES ARE ALLOWED ON ANY PORTION OF THE TREES
- ii) Any work done on inaccessible trees is to be done with lifts.
- iii) Any work done on trees inaccessible to lifts needs to be done without spikes.
- iv) Contractor Supervisor, or equivalent, must be onsite for full duration of work.
- v) Scheduling of work
 - (1) To be completed in a maximum of two (2) working days.
 - (2) Work may or may not be scheduled on consecutive days due to events in the Facility.
- vi) Work to be done on Kahakai Street, Promenade, and Atkinson Drive, cannot start before 9:00am. Perimeter areas on Kapi'olani Blvd. and Kalākaua Ave. are acceptable to start earlier, with HCC pre-approval.
- vii) Removal of trash and debris
 - (1) Contractor is responsible for removal and hauling of all branches, leaves, fruits, etc. from the trees.
 - (2) Chipper cannot be run in the loading docks, nor may it be stationed out on Kahakai Drive.
- viii) Street and sidewalk amendments
 - (1) Any alteration to the path of traffic or sidewalk closures is the responsibility of the Contractor to obtain applicable permits with the City & County of Honolulu.
 - (2) All permits are to be supplied to HCC prior to the start of work.
- ix) All equipment used on sidewalks must be pre-approved by HCC, including but not limited to man lifts, lift trucks, and personal or work vehicles. Do not assume that equipment will be allowed on sidewalks.
- x) Additional Contractor Responsibilities
 - (1) Perform property inspections with HCC representative. During onsite work, constantly review and advise HCC of potential problems using foresight and experience to ward off future problems by taking a proactive approach.
 - (2) Maintain safe work practices as it relates to your industry.
 - (3) Any damage to the facility, its infrastructure, or its assets will be the Contractor's financial responsibility and subject to HCC's oversight and execution for the repair and/or replacement.
 - (4) Adhere to all of the Health & Safety Procedures, Section 1, Contractor Policy

APPENDIX B

OTHER TREES

Appendix B
Scope of Services
Trees, Other than Coconut Palms

Contractor to perform the following Scope of Services at HCC, on an as needed basis:

Prune other HCC trees with the exception of the coconut trees; estimated 1 time per year, or as requested through HCC Purchase Order.

a) Baseline Scope

- i) Scope located on the Perimeter of the building (Kahakai Street, Atkinson Drive, Kapiolani Blvd., Kalakaua Ave.), Promenade (above Ala Wai Walkway), and the 4th floor rooftop garden
 - (1) "Perimeter" scope includes = 13 Monkey pod, 12 Shower, 5 Lauhala, 4 Kukui Nut, 26 Travelers Palm
 - (2) "4th floor" scope includes = 4 Kukui Nut, 6 Fan Palms, 2 Milo, 1 Kou, 1 'Ulu.
- ii) To include removal of fruits/seeds, unhealthy branches/leaves, thinning to allow at least 50% sunlight to pass through, and removal of any branches interfering with any structure /equipment/amenities. Specific extent of scope to be agreed with HCC prior to start of work.
- iii) Provide a written health assessment of all trees, produced by a certified arborist, annually or if service is requested.
- iv) If the total number of tree units specified above for any of the three category locations, changes by more than one tree, pricing may be re-negotiated at the discretion of HCC.

b) Alternative additive scope

- i) Crown Reduction of 20%. If requested.
- ii) Crown reduction of 50%. If requested.
- iii) Full Tree Removal with stump grind. If requested.
- iv) Full Tree Removal cut to ground level and treatment with root killing chemical. If requested.
- v) Stand-alone written health assessment of all trees, produced by a certified arborist, not associated with trimming scope of services. If requested.
- vi) Emergency work, less than 24-hours notification to the Contractor. If requested.
 - (1) Emergency work may include tree removal, branch removal, etc.
 - (2) Contractor is required to respond by phone or in-person to any HCC emergency call within eight (8) hours or less, and be able to be onsite for execution of work scope within an additional maximum of four (4) hours or less; Otherwise if these conditions are not met, scope will be billed at "Other work" classification.
 - (3) Effective 24 hours 7 days a week.
- vii) Other work not specified, at an hourly rate.

- (1) Additional service(s) may be deemed necessary that are not identified in the Scope of Services.
- (2) HCC will require that the Contractor provide an estimate for the additional identified service(s) and HCC will issue a Purchase Order to provider before any additional service(s) are to commence.

c) Applicable to all scopes

- i) NO SPIKES ARE ALLOWED ON ANY PORTION OF THE TREES
- ii) Any work done on inaccessible trees is to be done with lifts.
- iii) Any work done on trees inaccessible to lifts needs to be done without spikes.
- iv) Heavy and or wheeled lifts cannot be used on the 4th floor.
- v) Contractor Supervisor, or equivalent, must be onsite for full duration of work.
- vi) Scheduling of work
 - (1) To be completed in a maximum of three (3) working days.
 - (2) Work may or may not be scheduled on consecutive days due to events in the Facility.
- vii) Work to be done on Kahakai Street, Promenade, Atkinson Drive, and the 4th floor cannot start before 9:00am. Perimeter areas on Kapi'olani Blvd. and Kalākaua Ave. are acceptable to start earlier, with HCC pre-approval.
- viii) Removal of trash and debris
 - (1) Contractor is responsible for removal and hauling of all branches, leaves, fruits, etc. from the trees.
 - (2) 4th floor debris must be removed via HCC bins, freight elevator, and out to a chipper or other disposal truck. HCC bins will be provided to Contractor. Damages to bins will be the responsibility of Contractor.
 - (3) Chipper cannot be run in the loading docks, nor may it be stationed out on Kahakai Drive.
- ix) Street and sidewalk amendments
 - (1) Any alteration to the path of traffic or sidewalk closures is the responsibility of the Contractor to obtain applicable permits with the City & County of Honolulu.
 - (2) All permits are to be supplied to HCC prior to the start of work.
- x) All equipment used on sidewalks must be pre-approved by HCC, including but not limited to man lifts, lift trucks, and personal or work vehicles. Do not assume that equipment will be allowed on sidewalks.
- xi) Additional Contractor Responsibilities
 - (1) Perform property inspections with HCC representative. During onsite work, constantly review and advise HCC of potential problems using foresight and experience to ward off future problems by taking a proactive approach.
 - (2) Maintain safe work practices as it relates to your industry.

- (3) Any damage to the facility, its infrastructure, or its assets will be the Contractor's financial responsibility, and subject to HCC's oversight and execution for the repair and/or replacement.
- (4) Adhere to all of the Health & Safety Procedures, Section 1, Contractors Policy.

APPENDIX C

BID FORM – RATE CARD

Appendix C
 Bid Form - Rate Card
 Basic Pruning

Type of Pruning	Area	Tree	# of Trees	Cost per Tree	Total Cost
Basic (per scope)	Perimeter	Monkeypod	13		\$ -
		Shower	12		\$ -
		Lauhala	5		\$ -
		Kukui	4		\$ -
		Travelers	26		\$ -
	Subtotal				\$ -
	4th Floor	Kukui	4		\$ -
		Fan Palms	6		\$ -
		Milo	2		\$ -
		Kou	1		\$ -
		‘ulu	1		\$ -
	Subtotal				\$ -
	Total				\$ -

Basic (per scope)	Perimeter	Coconuts	85		\$ -
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Appendix C
Bid Form - Rate Card
20% Reduction

Type of Pruning	Area	Tree	# of Trees	Cost per Tree	Total Cost
Basic (per scope)	Perimeter	Monkeypod	13		\$ -
		Shower	12		\$ -
		Lauhala	5		\$ -
		Kukui	4		\$ -
		Travelers	26		\$ -
	Subtotal				\$ -
	4th Floor	Kukui	4		\$ -
		Fan Palms	6		\$ -
		Milo	2		\$ -
		Kou	1		\$ -
		‘ulu	1		\$ -
	Subtotal				\$ -
	Total				\$ -

Appendix C
 Bid Form - Rate Card
 50% Reduction

Type of Pruning	Area	Tree	# of Trees	Cost per Tree	Total Cost
Basic (per scope)	Perimeter	Monkeypod	13		\$ -
		Shower	12		\$ -
		Lauhala	5		\$ -
		Kukui	4		\$ -
		Travelers	26		\$ -
	Subtotal				\$ -
	4th Floor	Kukui	4		\$ -
		Fan Palms	6		\$ -
		Milo	2		\$ -
		Kou	1		\$ -
		‘ulu	1		\$ -
	Subtotal				\$ -
	Total				\$ -

APPENDIX D

HCC HEALTH & SAFETY PROCEDURES

HAWAII CONVENTION CENTER
HEALTH & SAFETY PROCEDURES - CONTRACTOR POLICY

OVERVIEW:

Provide contractors of the Hawaii Convention Center ("HCC" or Facility) with the HCC/AEG Management HCC, LLC ("AEG") rules, regulations and requirements when working at the Facility.

POLICY:

The policy of HCC/AEG is to provide a safe and secure environment for our clients, guests, visitors, contractors and employees.

PROCEDURE:

All contractors and sub-contractors are expected to abide to all HCC/AEG policies as listed:

- I. Health, Safety and Environment
- II. Access to Facility
- III. Fire, Health, and Safety - General Rules
- IV. Equipment Safety
- V. Hazardous Works and Materials
- VI. Special Requirements
- VII. General Do's and Don'ts

I. **HEALTH, SAFETY AND ENVIRONMENT**

A. **Compliance**

The Contractor, their employees and agents will comply with all relevant statutory and HCC/AEG's regulations pertaining to health, safety and environmental protection.

The Contractor shall ensure that all materials and equipment used in the project, regardless of the owner, comply with all relevant regulations and statutory requirements of HCC/AEG, the Government, local and other authorities with jurisdiction for occupational safety and health. All equipment requiring certification by authorizing agencies will be certified before brought onto Facility premises.

The Contractor is required to present license/certification of specific individuals who will operate any of HCC's lift equipment, in accordance with applicable state and federal OSHA regulations and HCC Safety Policies.

The Contractor is required to ensure proper license/certification is current, lawful and held by any individual operating lift equipment not owned by HCC.

B. **Responsibilities**

The Contractor is wholly responsible for the safety and safe working practices of its employees and agents. The Contractor will ensure their staff is trained and certified, as applicable, on the equipment required for the job, safety precautions and safe working practices before the job commences. HCC/AEG has the right to request the Contractor to provide certification, licensing or credentialing that is required by government regulation.

The Contractor shall report to HCC/AEG (Security Department) any incident or accident occurring, which involves any employee or agent of the Contractor. In cases of injuries or non-injuries incidents judged to be serious by HCC/AEG, the Contractor will carry out a full investigation without additional cost to HCC/AEG. A detailed report is submitted to HCC/AEG within three (3) working days, stating events relating to the incident or accident: the primary and contributory causes, conclusions, and recommendations to prevent reoccurrence.

The Contractor affirms that it has a written safety policy which is comparable to the HCC/AEG Safety Policy. The written safety policy is acknowledged, supported, and endorsed by HCC/AEG management. The Contractor further affirms that its safety policy has been disseminated and Contractor Employees and agents have been trained and signed off as completed.

The Contractor's safety policy will include a description of the Contractor's safety organization, procedures, and methods of communication to and from its employees and agents.

Contractors, their subcontractors, suppliers, and delivery vendors to all have appropriate and active Insurance Certificates and personal Medical Coverage for all employees or representatives.

C. **Health and Safety Site Control**

The Contractor will permit HCC/AEG access to any equipment, personnel, materials, and records involved in any job on the work site at HCC/AEG to enable HCC/AEG to:

1. Ensure the Contractor complies with all provisions presented herewith.
2. Ensure the Contractor is carrying out its responsibility under its Safety Policy.
3. Ensure the Safety Policy of the Contractor complies with all provisions presented.
4. Conduct, if required, independent investigations into an incident arising out of/or in connection with the job performance.

D. **Violation of Health and Safety Regulation**

If the Contractor is performing the job in an unsafe manner, or if its equipment requires modification to meet statutory or HCC/AEG safety standards, **HCC/AEG reserves the right to immediately suspend all or part of the job.**

The suspension notice shall include reasons for HCC/AEG issuing such notice and will outline the steps required to be taken by the Contractor to rectify the hazard.

The Contractor shall be considered inoperable of its obligations under this situation until the unsafe working condition hazard is remedied to the satisfaction of HCC/AEG.

The refusal or inability of the Contractor to remedy any hazardous working practice or to perform the required modification to its equipment within seven (7) days shall constitute a breach of Contract. HCC/AEG may, in addition to and without prejudice to any other rights the Contractor may have, terminate the Contract in accordance with the Contract.

E. **Personal Protective Clothing and Equipment**

The Contractor, at its own expense, supplies all its employees or agents, adequate personal protective clothing and equipment that will satisfy accepted industry standards as advised by HCC/AEG. Such protective equipment is supplied and always maintained in good condition at the Contractor's expense. The equipment must be worn on all relevant occasions as required by law, notice, instruction and in good sense.

F. **Security Checks**

HCC/AEG reserves the right to require the Contractor and their employees or agents to produce acceptable evidence of identification, such as a driver's license or identification card or badge, to HCC/AEG for the purpose of entering any premises of HCC/AEG. The Contractor and their employees and agents shall consent to the searching of any package, toolbox, or suitcase in their possession.

Contractors and their staff unwilling to comply with such requirement will not be permitted entry into any premises of HCC/AEG and, consequently, HCC/AEG will not be liable for any cost arising directly or un-directly out of such circumstances. The Contractor and their employees or agents shall also comply with such request prior to leaving the premises of HCC/AEG.

II. **ACCESS TO THE FACILITY**

A. **Access Control**

The Contractor must issue a list of all workers who will enter the Facility's premises by a company official. The list is provided to the Security Department prior to an employee or agent being authorized access to the premises.

Workers must identify themselves at the Security checkpoint entrance to the Facility. Verification will be by the submitted name list. Contractors should provide their workers with a nametag with the following information:

Name of company
Name and surname of worker
Position
Photograph of worker
Number of tag

Workers will be issued a colored wristband to verify they have checked in with HCC Security and are authorized to be on property.

The Facility, at its discretion, can object and require the Contractor to remove any person(s) employed by the Contractor or agent from the site who, in the opinion of the Facility is incompetent or negligent in the proper performance of their duties or whose employment or behavior is otherwise considered by the Facility as undesirable. Such persons are not employable or can continue work at the Facility.

B. **Means of Access**

Workers must only enter and exit the Facility through the Security Check-In on the Intermediate Level. It is accessible by walking along the Ala Wai Terrace Promenade past the Grand Staircase. When entering through the parking level, take service elevators 4 and 5 located in Section F, to the Intermediate Level "2" to Security Check-in. Contractors are not allowed to use guest elevators.

On the first day of work, all workers are to meet at the designated entrance for the identified management personnel to direct them to the work site.

C. **Daily Responsibility**

A responsible person designated by the Contractor will report their daily scope of work to the designated management in charge before commencing work. The Chief Engineer is the main point of contact should it be necessary to isolate or shut down any of the Facility plant equipment or systems.

D. **Event Contractor Use of Wristbands**

Should a contractor doing business on HCC decide to use a wristband system to ensure security within their area of operation, The Event Manager will be responsible for informing HCC Security of the use of wristbands and the color the contractor will be using. This will enable Security to select a different color than the contractor so there is no confusion.

E. **Before/After Shift**

Contractors are only allowed to be on site ½ hour prior and ½ hour after a scheduled shift. Contractors are not allowed on site when not scheduled.

III. **FIRE, HEALTH AND SAFETY - GENERAL RULES**

SMOKING IS STRICTLY PROHIBITED IN ALL AREAS OF THE FACILITY EXCEPT IN THE DESIGNATED SMOKING AREA.

Contractors and contractor's employees must abide by the Facility current COVID-19 protocols and procedures.

The contractor MUST appoint a responsible person to coordinate and ensure all safety measures and MUST be present at the project site at all times.

HCC/AEG designated management personnel will brief the contractor on the facility's firefighting system, fire detection system and evacuation routes and the Facility work safety guidelines.

All working areas must be cleaned, and debris removed from the Facility premises on a daily basis at the end of each day.

All work areas are to be properly secured prior to departure at the end of a day.

A fully supplied first aid kit must be provided by the Contractor and kept at the work site.

All workers are to be properly dressed based on the safety guidelines with proper shoes or boots.

All electrical equipment is to be properly wired, grounded with correct fitting plugs. Items inoperable or hazardous must be handled under the lockout tag out guidelines.

IV. **EQUIPMENT SAFETY**

Any moving vehicle (electric carts, scooters, bicycles, tricycles, etc.) must be pre-approved in writing for use by the Facility Director of Operations prior to use in the Facility. Use of approved vehicles is restricted to work areas only.

Approved personnel using a scissor or boom lift must wear a hardhat and eye protection. A safety harness is required when using lifts at all times.

Workers operating equipment, such as forklifts and aerial lifts must be certified in the use of such equipment and carry proof of such current certification while operating equipment. Operators must present current certification at Security Check-in and obtain a wristband authorizing use of lifts owned by HCC.

Transporting lifts to another level, through the Facility freight elevators require pre-approval and scheduling of an elevator operator through the Facility.

No vehicles or pallet jacks are allowed to be operated on the green, slate tile floor areas without pre-approval. Necessary preparations are required.

V. **HAZARDOUS WORK AND MATERIALS**

A special Work Permit must be filed with the Chief Engineer or designated department prior to commencement of hazardous work for:

- Welding
- Cutting
- Scaffolding work
- Spray painting or varnishing
- High suspension cleaning

Note: A separate fire extinguisher must be provided at location of all welding or cutting work.

All hazardous materials e.g. solvents, pressurized canisters, gasoline, oils, fuels, paints, varnishes etc. shall be stored in approved designated areas and in OSHA approved storage containers. All containers will be metallic and properly sealed. All containers will be properly labeled. Proper respiratory masks must be used. NO SMOKING must be enforced. All materials are identified in the MSDS sheets available in each department and Security Base. Contractors are responsible for disposing of any hazard chemical brought onto HCC property.

VI. **SPECIAL REQUIREMENTS**

A. **Noise Control**

The Contractor shall note that no noisy Work will be allowed to be carried out before 8 a.m. and after 5 p.m.

Due to "business as usual" factor for the Facility, it is further required that noise levels be maintained at a low level to minimize the disturbance/noise nuisance to the Facility occupants. This will include cutting of holes, drilling/fixing to structures, alterations and demolition, grinding of steel, removal of existing elements, finishes, fittings, fixtures, hacking/hammering etc. This type of work should be effectively reduced to an absolute

minimum by adoption of alternative methods/fixings and containment on the carrying out of all such noisy operations within limited periods daily.

Should noise levels in the opinion of the Facility become excessive and unacceptable under the above conditions, the Contractor will be requested to take immediate action to cease all operations giving rise to the unacceptable noise levels and to amend his methodology to allow him to continue within the acceptable noise limits.

B. **Construction Barricades**

The Contractor may be required to provide a section of boarding or construction barricades to match the surrounding area to separate the work areas from the Facility public areas and to prevent all unauthorized public access to all work areas. This boarding will require adaptation and relocation to suit the phasing/staging of the project work.

Before erection/ alteration of boarding, the Contractor will submit a detailed plan showing the proposed form/ location of boarding for approval by the Facility.

C. **Quarterly Meeting**

The Contractor is required to attend HCC Quarterly Contractor's meeting, held at the Facility. A minimum of one company representative must sign-in for attendance. Notification of the meeting schedule will be sent via email to the designated contact. It is the Contractor's responsibility to ensure that the most current email address and contact information is provided to the Facility.

VII. **GENERAL DO'S AND DON'T'S**

1. Only authorized subcontractors and their employees are permitted to operate and conduct business within the Facility. The Director of Operations will determine authorized contractors.
2. Children under eighteen (18) years of age are not permitted in work areas.
3. This is a State-owned building and therefore it is a NO SMOKING facility. Smoking is prohibited in all areas of the Facility except in the designated smoking areas. The designated smoking area is located in the ma uka/Waikikī corner of the parking garage. Contract employees are prohibited from using the Porte Cochere or Kahakai Drive as a smoking or break area.
4. Contractor must stay in designated job site areas only and must not stray to any other areas of the Facility under any circumstances. At the end of the shift, contractors are not allowed to remain on property or at their vehicles.
5. No Contractor is allowed, at any time, in the client, guest/public areas of the Facility nor be allowed to use any guest elevator or restroom in the Facility.
6. ALL contractor workers are required to sign in and out of the building at Security Check-In located on the intermediate level. Workers are required to sign in and obtain an identification wristband while on Facility property. Workers are required to return to Security Control and sign out at the end of their work shift.
7. All signs and traffic markings must be obeyed in the parking garage.

8. There is no overnight parking allowed unless prior arrangements have been made with the Director of Security. If authorization is given, an overnight permit will be issued and must be displayed on the dashboard of the vehicle it is issued to. Parking cost will be charged for each day the vehicle is parked. Vehicles left overnight without authorization will be towed at owner's expense.
9. Contract workers who are dropped off and picked up at the start and end of their shift need to arrange these pick-ups and drop offs on Kalakaua Avenue ONLY. Kahakai Drive is not to be used as a waiting area for pick up.
10. Contractor will maintain complete separation of construction areas for existing functions for airborne contaminants, dust control, noise, waste and all OSHA safety standards.
11. Contractor is responsible for the protection of his work and adjoining areas.
12. Contractor will maintain clear egress in corridors at all times during construction until completed or approved alternative route is established.
13. Under no circumstances may any exterior door be blocked open
14. Contractor shall use designated loading dock area only for the receiving of goods. Loading docks will be used for active unloading and loading only. Dock reservations are required and can be made through docres@hccasm.com. No vehicles will be parked in the loading dock. No deliveries through the front entrance are allowed.
15. Contractor must park in the area designated by the Facility.
16. There will be no alcohol, beer, wine or drugs consumed on the job site or during the workday whatsoever.
17. Meals are to be consumed only in the Lunch Room located on the Parking Level to the rear of Elevators 4 & 5.
18. All bags or boxes are subject to security check upon entering or leaving the building. Any refusals will cause the person to be barred from the Facility premises.
19. Contractor is to furnish their own tools. Under no conditions will a non-Facility employee be allowed to use a Facility tool. By the same token, Facility employees are not to use Contractor's tools.
20. The Facility is not responsible for the Contractor's property.
21. All work areas must be kept clean at all times. Contractor is responsible for the removal of all debris and excess material during and at the completion of the project. Contractor is not to use Facility telephones at any time for any reason.
22. Contractor must wear clothing, which is in good taste. Any attire which causes unwarranted distractions is unauthorized. Lack of a shirt or wearing muscle, fishnet, sleeveless shirts, cut-offs, shorts or sandals are not permitted. Clothing with offensive wording is prohibited.
23. Proper protective safety equipment shall be worn at all times. (No open toe shoes, slippers, etc.)
24. Contractors must conduct themselves in a professional manner and are subject to the same rules as Facility Employees. No shouting, profanity, "cat calling" or confrontation with Facility guests or with Facility employees will be tolerated.

25. Contractors are not permitted to fraternize with Facility employees, clients, guests or patrons.
26. The use of portable radios, stereos is strictly prohibited.
27. Violation of these policies will be documented and reported to Facility management for appropriate action

Revised: 2/2023.

APPENDIX E

AGREEMENT FOR GOODS AND SERVICES

AGREEMENT FOR GOODS AND SERVICES

THIS AGREEMENT FOR GOODS AND SERVICES (this "Agreement") is made effective as of DATE by and between, AEG Management HCC, LLC ("Company") and NAME OF COMPANY ("Contractor").

RECITALS

A. Company is the manager of the Hawaii Convention Center in Honolulu, Hawaii (the "Facility") pursuant to that certain Contract for Professional Services (the "Management Agreement") effective as of January 1, 2014 between the Hawai'i Tourism Authority ("HTA"), a duly organized authority of the State of Hawai'i (the "State") and Company.

B. Contractor provides the following goods and services: DESCRIBE. Company desires to engage Contractor for goods and services, and Contractor desires to provide such goods and services, on the terms and conditions set forth in this Agreement.

AGREEMENT

In consideration of the mutual covenants that are contained in this Agreement, the parties hereby agree as follows:

1. **SCOPE OF GOODS AND SERVICES.** Company hereby engages Contractor, and Contractor hereby agrees, to provide the goods and services as set forth more fully on Exhibit A attached hereto (the "Goods and Services"). With regard to the provision of the Goods and Services, Contractor shall:

1.1 Provide all goods set forth in the Goods and Services to the Facility (the "Goods").

1.2 Perform all services set forth in the Goods and Services at the Facility (the "Services").

1.3 Provide all personnel required in order to provide the Goods and Services at the Facility.

1.4 Except for those items, if any, expressly required by this Agreement to be furnished by Company, Contractor shall furnish or provide all of the materials (including equipment and supplies, uniforms, communication equipment and any other equipment) and all other items necessary to perform and provide the Goods and Services and to carry out and perform all of Contractor's obligations under or pursuant to this Agreement.

1.5 Upon request from Company, Contractor shall immediately reassign or remove from the performance of the Goods and Services hereunder any of its employees or personnel supplied by Contractor, including any supervisory personnel, who, in the sole judgment of Company, engage in improper conduct, are not suitably attired or neatly groomed, do not conduct themselves in an ethical, businesslike or professional manner, or are not otherwise, in the reasonable judgment of Company, suitable or acceptable to perform the Goods and Services or any tasks assigned to them.

1.6 Comply with and conform to all rules, regulations and directives issued by Company or their designees from time to time, and shall cause all of its employees, personnel, agents, independent Contractors (if any) and invitees at all times to abide by and conform to all of the same.

1.7 Comply with all terms and conditions of this Agreement applicable to the Goods and Services, as such this Agreement may be modified, amended or superseded from time to time.

1.8 At all times and in all situations, Contractor shall act in the best interests of HTA and the State of Hawai'i, commensurate with the highest standards of its profession and industry and in a manner that promotes and supports the public images, policies, programs and goals of the HTA and the State of Hawai'i, and their working relationships with all other persons, and with a long term view toward fulfilling the mission and objectives of the HTA.

1.9 Contractor shall keep and preserve for at least three (3) years following the final payment under this Agreement, all financial and accounting books, records and reports, including any personal information, and any cost or pricing related to the performance of the Goods and Services at the Facility. Personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the retention period as set forth above, the files, book, 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.

1.10 AEG, the State of Hawai'i and/or HTA may audit the books and records of Contractor relating specifically to its performance of Service s under this Agreement, related to cost or pricing data, or any state contract, including subcontractors, other than a firm fixed-price contract.

1.11 No person performing work under this Agreement shall engage in any discrimination that is prohibited by any applicable federal, state or county law.

1.12 To the extent applicable to the Goods and Services, Contractor shall comply with the provisions of the Hawai'i Convention Center Health and Safety Procedures Section 1 – Contractor Policy as set forth on Exhibit B attached hereto and made a part hereof.

1.13 Prior to the execution of the Agreement, Contractor must furnish proof of compliance with the requirements of HRS § 103D-310(c), including, without limitation, the following:

- a. Chapter 237, tax clearance;
- b. Chapter 383, unemployment insurance;
- c. Chapter 386, workers' compensation;
- d. Chapter 392, temporary disability insurance;
- e. Chapter 393, prepaid health care; and
- f. Proof that Contractor is:
 - i. Registered and incorporated or organized under the laws of the State, hereinafter referred to as a "Hawaii business"; or
 - ii. Registered to do business in the State, hereinafter referred to as a "compliant non-Hawaii business".

Contractor must furnish a Certificate of Vendor Compliance and a certificate of insurance demonstrating compliance with any HRS vendor insurance requirements.

2. **TERM.** The term of this Agreement shall commence as of the effective date hereof and shall terminate on DATE ("Term"), unless extended by the written agreement of the parties or this Agreement is sooner terminated in accordance with the terms and conditions of this Agreement.

3. **COMPENSATION.** As full and complete compensation and consideration for all of the Goods and Services to be provided by Contractor under or pursuant to this Agreement, Company shall pay to Contractor the compensation as set forth on Exhibit A attached hereto.

All sums due to Contractor under this Agreement shall be paid by Company to Contractor within thirty (30) days following receipt by Company of an invoice from Contractor fully describing the work performed, including the number of hours worked by Contractor personnel, if applicable, rates pursuant to this Agreement, taxes, if any, and the compensation due to Contractor.

4. **SAFETY AND LEGAL REQUIREMENTS; AUTHORITY; WARRANTIES.** Without in any way limiting any other term or provision of this Agreement or any obligation of Contractor hereunder, Contractor shall do or cause to be done all of the following:

(a) perform all services set forth in the Goods and Services in a first-class manner that shall protect the health and safety of all patrons, employees and other users of the Facility; (b) adhere to all laws, policies, rules, and regulations applicable to the Contractor and to the Services to be provided by Contractor pursuant to this Agreement; (c) if an authorized management person of Company is not available, then contact the proper local authorities for assistance at the Facility when such assistance is appropriate for safety; (d) obtain, maintain and comply with all licenses, permits and franchises or approvals from any governmental authority that may be required to enable Contractor to perform all of the requirements set forth in the Goods and Services and fulfill all of its obligations under this Agreement, which may include a Certificate of Vendor Compliance and (e) comply with the provisions of the Hawai'i Convention Center Health and Safety Procedures Section 1 – Contractor Policy as set forth on Exhibit B

Contractor further represents and warrants that (A) it is a licensed contractor; (B) it holds all requisite licenses to perform the work contemplated hereby in the jurisdiction in which the Facility is located; (C) it has the full right and authority to enter into and fully perform this Agreement in accordance with its terms; (D) this Agreement constitutes a valid, binding and enforceable agreement of Contractor; and (E) the execution, delivery and performance of this Agreement by Contractor will not violate the provisions of any agreement to which it is a party or by which it is bound.

All Goods shall be owned by Company and any and all warranties applicable to such Goods shall be enforceable by Company or shall be transferred by Contractor to Company. If applicable.

Contractor warrants to Company the following:

(a) **General Warranty.** All Goods and Services furnished under this Agreement shall be of good quality, free from faults and defects and in conformance with this Agreement and all plans, specifications, drawings or other supplements concerning the Goods and Services approved in writing by Company. Contractor shall promptly make good at its cost any and all defects that appear during the Term (or

such longer time as may be set forth Agreement from the date of final completion, including any punch list work. The terms of this warranty shall not be construed to limit any other remedies available to Company at law or in equity, under specific warranties, or under this Agreement. Contractor certifies that it has reviewed, observed and accepted as suitable for its work the existing conditions at Facility and the Agreement, and warrants that the Compensation (as defined in Exhibit A) includes all sums necessary to perform the Goods and Services under the conditions indicated by Contractor's review and observation of Facility and the Agreement.

(b) Equipment Warranty. If the furnishing or provision of equipment is part of the Goods and Services, Contractor hereby represents, warrants and covenants to Company that: (a) all equipment and materials will be free from defects in workmanship and material and conform in all material respects to all specifications provided by Company, (b) all equipment and materials shall be new and of high quality material and shall be free of faults, defects, liens and encumbrances except for liens or encumbrances arising in the normal course of business by operation of law that are not at the particular time in question due and delinquent, (c) the equipment and materials shall comply with all laws and regulations applicable to the same, and (d) the equipment and materials are fit for its intended purpose.

5. **INDEMNIFICATION.** Contractor agrees to indemnify, defend and forever save and hold harmless Company, AEG Management HCC, LLC, AEG Venue Management Holdings, LLC, ASM Global Parent, Inc., State of Hawaii, Hawaii Tourism Authority (HTA), and their respective affiliates, licensees, lenders and contractors, as well as each of their respective officers, directors, partners, members, shareholders, employees, agents, representatives, successors and assigns, (sometimes collectively referred to herein as the "Company Indemnitees" and individually as a "Company Indemnitee"), from and against any and all damages, claims, losses, demands, costs, expenses (including attorneys, fees and costs), obligations, liens, liabilities, actions and causes of action, threatened or actual, which any one of the Company Indemnitees may suffer or incur arising directly or indirectly out of or in connection with the Goods, performance of the Services or the failure of Contractor to perform the Services in accordance with the terms of this Agreement or any act or omission of the Contractor, including its employees, officers, agents or subcontractors. The foregoing indemnification shall survive any termination or the expiration of the term of this Agreement.

6. **INSURANCE.** Without in any way limiting or altering the indemnification requirements of Contractor under or pursuant to this Agreement, Contractor shall, at its sole expense, procure and at all times maintain during the term of this Agreement all of the following insurance:

- (a) Contractor agrees, at its sole expense, to procure and maintain during the Term of this Agreement: (i) Commercial General Liability insurance, on an occurrence form, including blanket contractual liability, products and completed operations coverage, fire legal liability coverage, personal & advertising injury coverage (including but not limited to libel, slander, defamation of character, and discrimination) for the mutual benefit of Contractor, Company and their Contractors, successors and assigns, against all claims for personal injury, death or property damage in or about the Areas arising in the amount of \$1,000,000 per occurrence, \$5,000,000 in the aggregate, (ii) Commercial Automobile Liability insurance, on an occurrence basis covering all owned, non-owned, hired and leased vehicles with a limit of not less than \$1,000,000 per occurrence covering bodily injury and property and physical damage; and (iii) following form Umbrella or Excess Liability coverage with a limit of \$4,000,000 per occurrence in excess of \$1,000,000;
- (b) The insurance policies set forth in (a) above shall name as Additional Insureds each of the Company Indemnitees (as set forth in Section 5 above), their respective affiliates, vendors, lenders and Contractors, as well as each of their respective officers, directors, partners, members, shareholders, employees, agents, representatives, successors and assigns. All such insurance shall be primary and non-contributing to insurance maintained by Company.
- (c) Contractor agrees, at its sole expense, to procure and maintain during the term of this Agreement, Workers Compensation insurance in accordance with statutory limits and Employers Liability at a limit of \$1 million per occurrence covering all employees, performers, participants and other personnel of Contractor (other than such persons as are employed by Company and its respective affiliates), which shall be evidenced on the certificate of insurance required to be provided in accordance with Section 10(f & g) below. Such insurance shall include a waiver of subrogation in favor of Company.
- (d) To the extent applicable, Contractor shall obtain and maintain a Personal Property Floater and/or Miscellaneous Equipment insurance coverage on all of Contractor's personal property, trade fixtures, and Contractor's owned alterations, utility installations and third party property damage. Such insurance shall be full replacement cost coverage with a deductible of not more than \$2,500.00 per occurrence. The proceeds from any such insurance shall be used by Contractor for the replacement of personal property, tools & equipment. Contractor shall provide Company with written evidence that such insurance is in force and shall cause its insurers to a waiver of subrogation in favor of Company.
- (e) Company makes no representation that the limits or terms of coverage of insurance specified herein are adequate to cover Contractors property, business operations or obligations under this Agreement.
- (f) The insurance shall provide for coverage from commencement of work or occupancy of the premises. There will be no charge to Company for such coverage and a certificate of insurance evidencing such coverage shall be furnished to Company. Said policy of insurance and endorsements shall provide that the policy of insurance

cannot be canceled without 15 days prior written notification to Company. Said insurance shall not restrict or limit the coverage of the additional insureds. If Contractor fails to provide Company with the required certificate of insurance at least five (5) business days prior to the commencement of work or occupancy of premises, Company may, in its sole and absolute judgment, either (i) acquire, at Contractor's expense, such insurance as Company determines in its sole judgment to be necessary in order to protect the Company Indemnitees from any of the matters to be covered under subparagraph (a) above, or (ii) treat such failure as a default by Contractor and terminate the Agreement.

- (g) All insurance shall be effected by valid and enforceable policies issued by insurers of responsibility, licensed to do business in the Hawaii, such responsibility and the insuring agreements to meet with the reasonable approval of Company. An insurer with a current A.M. Best rating of at least AVI or better shall be deemed to be acceptable. Receipt by Company of a certificate of insurance, endorsement or policy of insurance which is more restrictive than the contracted for insurance shall not be construed as a waiver or modification of the insurance requirements above or an implied agreement to modify same nor is any verbal agreement to modify same permissible or binding. Any agreement to amend this provision of this Agreement must be in writing signed by the parties.
- (h) At the request by Company, Contractor shall promptly furnish loss information concerning all liability claims brought against Contractor (or any other insured under Contractor's required policies), that may affect the amount of liability insurance available for the benefit and protection of the Company Indemnitees under this Agreement. Such loss information shall include such specifics and be in such form as Company.
- (i) Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements as broad as stated herein and that they name Contractor and Company Indemnitees as Additional Insureds.
- (j) All insurance coverage available to Contractor and any available proceeds in excess of specified minimum limits shall be available to Company.

7. **LIENS.** Contractor shall be responsible for the satisfaction or payment of any liens for any provider of, among other things, work, labor, material or services claiming by, through or under Contractor. Contractor shall also indemnify, hold harmless and defend the Company Indemnitees against any such liens, including attorneys' fees and costs. Contractor shall not cause, suffer or authorize any lien, claim, or other encumbrance to be filed against the Facility or underlying property in connection with Contractor's Services or the exercise of any right or privilege of Contractor under this Agreement. If Company notifies Contractor that such a lien has been filed against the Facility or underlying property by Contractor or any Contractor performing work at the Facility at Contractor's request, then Contractor shall promptly have the lien bonded or removed and released of record at Contractor's sole cost and expense, no later than ten (10) days after notice thereof.

If Contractor fails to do so, Company has the right to retain out of any payment then due or thereafter to become due, an amount sufficient to discharge the lien and reimburse Company for all of its costs and expenses in connection therewith, including reasonable attorneys' fees and costs. Notwithstanding the foregoing, Contractor shall defend, indemnify and hold harmless Company and all other Company Indemnitees from all such mechanic's or similar liens, claims and encumbrances arising out of Contractor's performance of the Services. Upon request of Company, Contractor shall furnish evidence satisfactory to Company regarding payment of all of Contractor's obligations under this Agreement by supplying Company with appropriate releases of liens executed by all applicable materialmen, suppliers and subcontractors and proof of payment of all Federal, state and local taxes and other required fees. Company reserves the right to check with the materialmen, suppliers and subcontractors to determine the current status of indebtedness, and may, upon reasonable evidence of a claim of non-payment by a subcontractor, supplier or materialman, make checks jointly payable to Contractor and the materialmen, subcontractor or supplier, said sums to be deducted from amounts owing to Contractor. This contractual right of Company to pay Contractor by joint check is solely to protect Company from mechanics' lien rights and shall not be construed to create any rights in third parties against Company, or any obligations of Company to any third parties. Contractor shall furnish from time to time, upon request of Company, an affidavit specifying the names of all materialmen, suppliers and subcontractors furnishing labor, services or materials in connection with the Goods and Services.

8. **WAIVER BY CONTRACTOR.** Contractor agrees that Company shall not be responsible for any loss or damage to any property of Contractor resulting from fire, theft or any other cause unless due to the gross negligence or willful misconduct of Company and, except to the extent expressly provided herein, Contractor expressly assumes all risks of loss, damage or destruction of or to any of its property resulting from any such causes.

9. **TERMINATION.** This Agreement may be terminated by (i) Company at any time, with or without cause, upon 30 days' written notice to Contractor, (ii) Company immediately upon notice to Contractor if Company determines, in its sole discretion, that Contractor has failed to deliver any of the Goods required by this Agreement, any of the Services performed or to be performed by Contractor are unsatisfactory, or if Contractor fails, refuses or neglects to perform each and every one of the Services to be performed by Contractor under or pursuant to this Agreement or upon the breach by or failure of Contractor to perform any of its obligations or covenants under this Agreement, or (iii) Contractor upon the failure of Company to perform any of its material covenants and conditions hereunder which has not been cured within 30 days following written notice from Contractor to Company, or, if cure is not possible within said 30-day period, if Company has not taken meaningful steps within such time period to cure such default. Further, if the Management Agreement is terminated, this Agreement shall automatically terminate. Following any termination of this Agreement,

Company shall only be required to pay to Contractor any compensation earned by Contractor for any Goods and Services satisfactorily delivered or performed by Contractor prior to the date of such termination.

10. **INDEPENDENT CONTRACTOR STATUS.** Contractor is engaged hereunder as an independent Contractor and as such shall be solely responsible for full compliance with all requirements under all laws and regulations now or in the future applicable to Contractor, its business affairs and its performance of its duties under or pursuant to this Agreement, including, without limitation, state and federal taxes applicable to this Agreement (including payroll taxes), unemployment insurance and other insurance applicable and necessary with respect to its employees and all of its duties and obligations as an employer. The relationship created by this Agreement is that of independent Contractors, and nothing contained in this Agreement shall be deemed or construed as creating any partnership, joint venture, employment relationship, agency or other relationship between the parties or to make Company liable for the debts or obligations of Contractor. No officer, employee, agent, or servant of Contractor shall be deemed at any time to be an employee, servant, or agent of Company for any purpose whatsoever. Contractor shall require all of its personnel to refrain from making any representation by word or conduct whereby any other person might understand or believe that such persons are employees, agents, or servants of Company.

11. **INTELLECTUAL PROPERTY.** Contractor agrees that (i) nothing in this Agreement is intended to convey any ownership or other rights in the trademarks, service marks, copyrights or other intellectual property rights of Company, its affiliates' intellectual property rights or to the Facility or any of the events taking place at the Facility (the "Trademarks"), (ii) ownership of all such Trademarks shall remain the property of Company, its affiliates, or the Trademark owner, as the case may be, and (iii) Contractor will not use any Trademarks under any circumstances without the prior written consent of Company or Trademark owner, which consent Company or Trademark owner may withhold in its sole and absolute discretion.

Contractor hereby irrevocably assigns to Company all of his right, title, and interest in and to the products and results of the Services and all other obligations furnished or rendered by Contractor hereunder of whatever kind and nature, including all audio, audiovisual and photographic materials produced by Contractor in connection herewith, all underlying elements and versions thereof, and all works of authorship of whatever kind and nature contained therein or created in connection therewith (the "Works") created by Contractor pursuant to this Agreement (the "Copyrights"), together with all extensions and renewals of the Copyrights, throughout the world. Contractor represents and warrants to Company that it is the sole author of all Works created pursuant to this Agreement and the sole owner of the Copyrights therein, and that to the extent that it uses any employees or other personnel to provide the Services under Section 1 of this Agreement, such persons will have no interest in and to any of the Copyrights. Contractor agrees to provide to Company, at Company's request, any further and separate assignments of the Copyrights in the Works or other documents, and to take such other and further actions, as may be necessary or useful to confirm, record, or otherwise manifest Company's sole ownership of the Copyrights in the Works. Contractor agrees that any invoice sent to Company pursuant to Exhibit A to this Agreement shall contain no language inconsistent with Company's sole ownership of the Copyrights in the Works. Company shall be deemed for all purposes the author of the Works and shall own all rights, title and interests therein (including, without limitation, all Copyrights and all renewals and extensions thereof) and the exclusive right, throughout the universe in perpetuity, to distribute, perform, exhibit and otherwise use and exploit any and all such rights in any and all media by any and all methods now known or hereafter devised.

12. **CONFIDENTIAL INFORMATION.** During the Term of this Agreement, Contractor and its officers, directors, shareholders, employees, agents, Contractors and representatives may gain access or be exposed to certain confidential and proprietary information relating to the business of Company or its affiliates. Contractor agrees, for itself and its officers, directors, shareholders, employees, agents and representatives, that all such confidential and proprietary information shall remain and be kept in strictest confidence and shall not be disclosed to or used by any person or entity without the prior written consent of Company, which consent may be withheld by Company in its sole and absolute discretion. The obligation to maintain confidentiality provided herein shall survive any termination or expiration of the Term of this Agreement and may be enforced by injunctive relief or other equitable or legal remedies without the necessity of proving inadequacy of legal remedies and without proving that Company or any of its affiliates or any of their respective officers, directors, shareholders, partners, employees, agents, Contractors or representatives would suffer irreparable harm as a result of a violation of such confidentiality obligation.

Pursuant to 18 USC § 1833(b), an individual may not be held liable under any criminal or civil federal or state trade secret law for disclosure of a trade secret: (a) made in confidence to a government official, either directly or indirectly, or to an attorney, solely for the purpose of reporting or investigating a suspected violation of law or (b) in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal. Additionally, an individual suing an employer for retaliation based on the reporting of a suspected violation of law may disclose a trade secret to his or her attorney and use the trade secret information in the court proceeding, so long as any document containing the trade secret is filed under seal and the individual does not disclose the trade secret except pursuant to court order.

13. **EFFECT OF AGREEMENT/ASSIGNMENT.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective permitted successors and assigns; provided, however, that this Agreement may not be assigned by Contractor, nor may any of Contractor's duties hereunder be delegated, without the prior written consent of Company. Notwithstanding any other term or provision of this Agreement, it is expressly understood and agreed by Contractor that Company shall have the right to

designate another entity, including, without limitation, one of its affiliated or related entities, the State of Hawai'i, or HTA, to manage, direct and control the Goods and Services to be provided by Contractor hereunder, and Contractor agrees to fully cooperate with and comply with all directives and directions of any such other entity.

14. **NOTICES.** Except as otherwise expressly provided in this Agreement, any and all notices or other communication required or permitted under or pursuant to this Agreement shall be in writing and shall be delivered either by personal delivery or by certified or registered mail, return receipt requested, postage prepaid by United States mail, addressed as follows:

Company: Hawaii Convention Center
1801 Kalakaua Avenue
Honolulu, HI 96813
Attention: General Manager

Contractor: COMPANY
ADDRESS
Attention: COMPANY CONTACT

All notices shall be deemed delivered either upon actual receipt thereof if personally delivered or, if mailed, on the third day following deposit in the United States mails as provided above. Either party may change the address at which it receives notices by notifying the other party of such change in the manner provided herein.

15. **WAIVER.** No course of dealing or delay by either party to this Agreement in exercising any right, power or remedy under this Agreement will operate as a waiver of any right, power or remedy of that party, and no waiver by a party of a breach of any provision of this Agreement will not be considered or constitute a waiver of any succeeding breach of the provision or a waiver of the provision itself.

16. **CHOICE OF LAW.** The validity, interpretation, construction and enforcement of this Agreement shall be governed and controlled by the laws of the State of Hawai'i, without regard to that State's rules with respect to choice of law. Any action at law or in equity shall be brought in a state court of competent jurisdiction in Honolulu, HI.

17. **ENTIRE AGREEMENT / MISC.** This Agreement, including any exhibits and schedules, expresses and contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes and replaces any and all prior agreements and understandings, either oral or written, with respect to the subject matter hereof. If any covenant, term or provision of this Agreement is deemed to be contrary to law, that covenant, term or provision will be deemed separable from the remaining covenants, terms and provisions of this Agreement and will not effect the validity, interpretation or effect of the remainder of this Agreement. This Agreement may not be modified, altered or amended except by a written instrument signed by both parties. This Agreement may be executed in counterparts, each of which shall be an original, but all of which together shall constitute one and the same agreement. The parties agree to take such further acts and to execute such further documents that may be necessary or convenient to carry out the intents and purposes of this Agreement. Should either party to this Agreement commence any legal action or proceeding to enforce or interpret any term or provision of this Agreement, the prevailing party in such action or proceeding shall be entitled to collect and recover from the losing party the prevailing party's reasonable attorneys' fees and costs incurred in connection therewith, in addition to any other remedy or damages to which the prevailing party may be entitled or awarded.

18. **DOCUMENTS AND REPORTS.** Company shall have all ownership rights in all written, recorded, photographic, or visual materials, and all computation, sketches, reports, test data, survey results, photographs, renderings, and other materials pertaining to the Goods and Services, whether prepared by Contractor or Contractor's agents, produced in performance of this Agreement (collectively, the "Documents and Reports"). To the extent there are any Documents and Reports to which all rights are not deemed to be owned by Company, Contractor hereby assigns and transfers to Company all right, title and interest of Contractor and any of its employees, vendors, subcontractors or any third party engaged by Contractor in connection with the Goods and Services, in all projects and matters which embody all or part of the Documents and Reports. All Documents and Reports shall be for Company's exclusive use and re-use at any time without further compensation to Contractor and without any restrictions. Contractor shall retain no ownership, interest, or title in the Documents and Reports. Contractor shall not use any Documents and Reports for any purposes not necessary to the performance of the Goods and Services without the prior written consent of Company. Contractor agrees to execute such further documents and take such additional actions, which are consistent with the terms of this Agreement, as are necessary or required in order to perfect the rights granted herein.

IN WITNESS WHEREOF, the parties have executed this Agreement and have made it effective as of the day and year first above written.

CONTRACTOR:

By: _____
Name: _____
Title: _____

COMPANY:

By: _____
Name: _____
Title: _____

Exhibit A

Goods and Services and Compensation

Goods

DESCRIBE

Services

DESCRIBE

Compensation

For full and complete compensation for the Goods and Services, Company shall pay Contractor:

DESCRIBE

SCHEDULE. Time is of the essence.

COMMENCEMENT. Contractor agrees to begin providing the Goods and Services as soon as possible after the execution of this Agreement, and to complete the Goods and Services according to Company's work schedule, as may be amended from time to time.

(i) **SUBSTANTIAL COMPLETION.** Unless otherwise expressly agreed to in writing, Contractor shall achieve substantial completion of the Goods and Services no later than end of business on DATE (the "Substantial Completion Date"). Substantial completion of the Goods and Services shall occur upon Contractor's completion of the Goods and Services in good and workmanlike manner; in compliance with all applicable laws, this Agreement and all plans, specifications, drawings or other supplements concerning the Goods and Services approved in writing by Company; subject only to punch list items which do not impair the use of the improvements constructed as part of the Goods and Services; upon receipt of all applicable governmental approvals and sign-offs permitting the legal use and occupancy of the improvements constructed as part of the Goods and Services; and upon the Contractor causing Facility to be free from all construction debris, materials and other waste, as well as all tools, construction equipment and machinery

(ii) **DELAY DAMAGES.** Contractor shall not be entitled to monetary or consequential damages of any kind for delay in the project, regardless of cause, however, Contractor shall be responsible to Company for damages resulting from delay caused by Contractor or any of Contractor's subcontractors or materials. Contractor shall pay Company as liquidated damages the amount of revenue lost by Company by reason of failure to provide seating for paid, ticketed guests (the "Liquidated Damages") if Contractor does not complete the Goods and Services by the Substantial Completion Date or Final Completion Date, as applicable.

SUBMITTALS. Contractor shall prepare, review, stamp with approval (or obtain such stamped approval as required) and submit all samples, structural calculations, plans, shop drawings and product data (the "Submittal") as may be directed by Company and shall not perform Goods and Services without approved/stamped Submittals. Contractor shall submit the Submittal to Company prior to commencement of installation.

CHANGES IN THE GOODS AND SERVICES. Contractor shall provide additional Goods and Services only with prior written authorization from Company. Contractor shall not modify the Goods and Services without the prior written authorization of Company. Contractor shall not perform any additional work without express written approval of Company.

EXHIBIT B

HAWAII CONVENTION CENTER

HEALTH & SAFETY PROCEDURES – SECTION 1 – CONTRACTOR POLICY

(See Attached)

SCHEDULE 1

See attached

APPENDIX F

GENERAL TERMS AND CONDITIONS

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 I);
 - (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

SPECIAL CONDITIONS (AMENDING GENERAL TERMS AND CONDITIONS)

SPECIAL CONDITIONS

The following Special Conditions modify, change, delete from, and add to, the State of Hawaii's General Conditions which are included as part of the Contract Documents as Appendix E.

1. Changes to Terminology: Except as provided herein, the Terms throughout the entire document shall be changed and interpreted as follows:

"STATE" shall mean either the State of Hawaii or AEG Management HCC, LLC ("AEG") as a contractor for the state.
"HOPA" shall mean the "Contracting Officer" as defined in the Request for Proposals ("RFP").
"CPO" shall mean the "Contracting Officer" as defined in the RFP.
"Agency procurement officer" shall mean the "Contracting Officer" as defined in the RFP.
2. Delete Paragraph 6.d. in its entirety.
3. The first sentence of Paragraph 7 shall be changed to read: "The CONTRACTOR shall defend, indemnify, and hold harmless AEG Management Hawaii HCC, LLC, the Hawaii Tourism Authority ("HTA"), the State of Hawaii, and their respective officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, suppliers, or subcontractors under this Contract."
4. Delete Paragraph 10 in its entirety.
5. Delete Paragraph 11 in its entirety.
6. The second sentence of Paragraph 13.c. shall be changed to read as follows: "If the parties fail to agree, the Contracting Officer shall set an amount subject to the CONTRACTOR's legal rights."
7. The first sentence of Paragraph 14.a. shall be changed to read as follows: "The Contracting Officer may, when the interests of AEG, HTA, and/or the State of Hawaii so require, terminate this Contract in whole or in part, for the convenience of the STATE."
8. Delete Paragraph 17.b. in its entirety.
9. Add the following language to the beginning of Paragraph 17.d.: "Notwithstanding final payment requirements set forth elsewhere in the Contract, final payment under this contract . . ."
10. Delete Paragraph 18 in its entirety.
11. Delete Paragraphs 19.g., 19.h., and 19.i. in their entirety.
12. Delete the phrase "and applicable sections of chapters 3-123 and 3-126, HAR." at the end of Paragraph 21.a.(5).
13. Delete Paragraph 23 in its entirety.

14. The first sentence of Paragraph 25 shall be changed to read as follows: "The CONTRACTOR shall not refer to AEG, HTA, the State of Hawaii, or the Hawaii Convention Center, or any officer thereof, or any employees of the foregoing, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR.
15. The term "STATE" in Paragraph 33 shall mean "AEG, HTA, and the State of Hawaii" as those terms are defined herein.
16. The body of Paragraph 36, which is entitled "Conflict Between General Conditions and Procurement Rules" shall be changed to read as follows: "In the event of a conflict between the General Conditions and the STATE procurement rules (as set forth in Part III of chapter 103D, including the Hawaii Administrative Rules relating thereto), the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference."
17. The first sentence of Paragraph 37 shall be changed to read as follows: "The Contract documents identified and set forth in the Contract itself comprise all of the agreements, conditions, understandings, promises, warranties, and representations between AEG, HTA, the State of Hawaii and the CONTRACTOR relative to this Contract.

APPENDIX H

AGREEMENT FOR RENTAL EQUIPMENT

**AGREEMENT FOR RENTAL OF EQUIPMENT
(Without Operator)**

This Agreement is entered into effective _____ between the Hawai'i Convention Center ("HCC"),
State of Hawai'i, through AEG Management HCC, LLC. and its General Manager, and

_____, ("Renter"),

whose business address, phone, fax and email are as follows:

1. AEG Management HCC, LLC manages the Hawai'i Convention Center ("HCC") under a management contract with the State of Hawaii ("State"). The State has purchased certain equipment for use by AEG Management HCC, LLC in performance of its contract. The equipment rented hereunder is State property, being rented by AEG Management HCC, LLC on behalf of the State and for the convenience and use of the Renter.
2. The Renter is a contractor, licensee or a sub-contractor of a licensee that has been contracted or licensed to conduct an event or vendor performing procured services at the Hawai'i Convention Center.
3. Equipment Rented.
HCC agrees to permit the Renter to utilize within the confines of the HCC the following equipment at the following rates:

Equipment Description	Hourly	Daily	Weekly
a. 36' Articulated Boom Lift	\$90.00	\$320.00	\$900.00
b. 30' Scissor Lift	\$90.00	\$320.00	\$900.00
c. 18' Work Platform Lift	\$90.00	\$320.00	\$900.00
d. Forklift	\$75.00	\$275.00	\$750.00
e. ReachMaster Blue Lift B72: 36' Horizontal Reach, 72' Vertical Lift	\$100.00	\$350.00	\$1,000.00
f. ReachMaster Falcon TS121: 53' Horizontal Reach, 121' Vertical Lift	\$125.00	\$450.00	\$1,250.00

Fractions of an hour shall be charged at the hourly rate.

Rental fees may be waived upon pre-approval of the General Manager.

4. Rental Period.
This Rental Agreement shall be for a period from _____ (start date/time) to
_____ (end date/time).

5. Renter's Responsibilities.

The Renter shall:

- a. Operate the equipment only within the Hawai'i Convention Center and its immediate surroundings

within the area(s) pre-approved by HCC for this specific rental.

- b. Ensure that only fully qualified and certified personnel operate the equipment.
- c. Provide proof of certification to operate the equipment prior to use which must be presented in advance of the rental operation to the Human Resources Director or their designee.
 - The Reachmaster lifts require certification from Reachmaster
 - All operators of lifts (except forklifts) must always provide and wear their own safety harness and hard hat. They must be properly tied in at all times when using the lift, even when the lift is being moved from one location to another.
- d. Check-in at Security Base. Ensure that the equipment is fully operational upon acceptance of the equipment and submit the related HCC form to the HCC Manager or their designee.
- e. Immediately halt use of any equipment and bring to the attention of the HCC Manager any equipment operating deficiencies or problems.
- f. Ensure that equipment is under positive control of the Renter at all times and that no unauthorized individuals are permitted to utilize the equipment.
- g. Ensure that all safety and operating rules are strictly followed. This includes, but is not limited to, the use of a hard hat and close-toed shoes by any and all parties while using equipment items 3a, 3b, 3c, 3e, or 3f above. All related items must be supplied by the Renter.
- h. Be fully responsible for any damage to or loss of the equipment.
- i. Be fully responsible for any and all damages caused by operation of the equipment.

6. Statement of Waiver.

The Renter waives any and all claims against the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), the State of Hawaii and their officers and assigns from any and all claims including consequential damages arising from the use and/or operation of subject equipment by _____ (Renter), its employees, agents, and/or assigns.

7. Indemnification.

The Renter shall defend, indemnify, and hold harmless the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), the State of Hawaii and all of their members, officers directors, employees, and agents from and against all costs, liability, loss, damage, and expense, including all attorney's fees, and all claims, suits, and demands therefor, arising out of or resulting from the acts or omissions of _____ (Renter) or _____ (Renter's) employees, officers, agents or subcontractors as it pertains to the operation of subject equipment.

8. Liability Insurance.

The Renter shall provide proof of insurance to AEG Management HCC, LLC. that its operation of the equipment provided hereunder is covered under its Comprehensive General Liability and Property Damage Liability Insurance. Such liability shall be with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Any variance or waiver of this requirement must be pre-approved by the General Manager.

Such insurance shall name the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), the State of Hawaii and all of the members, officers, agents, and employees of each of them as additional insured with respect to claims arising out of or directly or indirectly relating to performance under the Agreement and shall provide for thirty (30) days advance notice of cancellation, reduction of coverage or non-renewal to the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), and the State of Hawaii and shall be endorsed to stipulate that the insurance afforded the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), and the State of Hawaii boards, officers, agents, and employees shall be primary insurance and not contributing with any other insurance of the Hawai'i Convention Center, AEG Management HCC, LLC, ASM Global, the Hawai'i Tourism Authority (HTA), and the State of Hawaii.

9. Compliance with Laws.

The Renter shall operate the equipment in strict compliance with all laws of the United States, the State of Hawaii, the City & County of Honolulu, and all rules and regulations issued pursuant to such laws.

Renter shall comply with all lawful directives issued by the General Manager of HCC or their representative in

enforcing of the terms of this Agreement.

10. Entire Agreement.

This document contains the complete and exclusive agreement between the parties, and it is intended to be a final expression of their agreement. No promise, representation, warranty, or covenant not included in this document has been or is relied upon by any party. Each party has relied upon its own examination of the full Agreement and the provisions thereof and the counsel of its own advisors, and the warranties, representations and covenants expressly contained in this Agreement itself. No modification or amendment of this Agreement shall be of any force or effect unless in writing executed by all parties herein.

11. Assignment.

The Renter shall not transfer, convey, assign, or permit the use of any of the rights or privileges granted under this Agreement in whole or in part to any other person, firm, or corporation without the prior written authorization of HCC. Such rights and privileges are not assignable or transferable by any process or proceedings in any court, or by attachment, execution, proceedings in insolvency or bankruptcy either voluntary or involuntary, or receivership proceedings. Any assignee approved by HCC must accept and assume all the terms and conditions of this Agreement to be kept and performed by Renter, and such assignment shall not in any manner discharge or release Renter from any of the obligations under the terms of this Agreement.

12. Severability.

The invalidity of any provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision herein.

IN WITNESS WHEREOF, the parties execute this Agreement on the dates below, to be effective as of the date first above written.

HAWAII CONVENTION CENTER (AEG Management HCC, LLC.)

BY: _____
General Manager

Date _____

Renter

BY: _____
Signature

Date _____

Title