

REQUEST FOR PROPOSALS
FOR
ICE RINK AND CHILLER PROCUREMENT

RFP No. 2025-5

HONOLULU, HAWAII

MARCH 2025

Proposal Due Date: April 18, 2025

**For Information, Contact Mari Tait,
Manager's Contracting Officer
at hccrfp@hccasm.com**

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NOTICE TO OFFERORS

AEG Management HCC, LLC a wholly owned subsidiary of ASM Global (“Manager” or “HCC”) is requesting proposals (“Proposals”) from qualified companies (“Offerors”) for a design and build project for the procurement of an Ice Rink and Chiller (the “Project”) for the Hawai’i Convention Center (“HCC”).

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

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

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

Forms and information are available by contacting:

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

Offerors should carefully read the entire RFP documents. Proposals must comply with all instructions herein provided and must be submitted with a completed and signed Proposal Form, a copy of which is provided hereto as Appendix A. Interested parties should contact the Contracting Officer (as defined in Section 1.2 below) at hccrfp@hccasm.com to register by **March 24, 2025**.

Written questions regarding this RFP may be submitted via email to hccrfp@hccasm.com by **4:00 p.m. Hawaii Standard Time (“HST”) on April 7, 2025**.

Offerors must submit their complete proposal no later than **4:00 p.m., HST, on April 18, 2025** via email to hccrfp@hccasm.com.

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

SECTION 1 - GENERAL INSTRUCTIONS TO OFFERORS

1.1 DEADLINE FOR PROPOSALS

Proposals **MUST** be submitted via email to hccrfp@hccasm.com no later than **4:00 p.m. HST, on April 18, 2025**.

Facsimile proposals are not acceptable.

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

1.2 CONTRACTING OFFICER

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

Contracting Officer -- Ms. Mari Tait
AEG Management HCC, LLC/HCC
1801 Kalakaua Avenue
Honolulu, HI 96815
hccrfp@hccasm.com

The Contracting Officer shall be the primary point of contact on the project for procurement and work-related issues.

1.3 COMPANY OVERVIEW

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

Facility Overview

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

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

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

1.4 PROCUREMENT TIMETABLE and SIGNIFICANT DEADLINES

The timetable set out herein represents Manager's best estimate of the schedule that will be followed in the RFP process. If an activity of the timetable, such as "Proposal Due Date for Receipt of Proposals" is delayed, the rest of the timetable dates may be shifted by the same number of days. Offerors will be advised, by addendum to the RFP, of any changes to the proposed timetable.

<u>Activity</u>	<u>Scheduled Date</u>
RFP Announcement	Sun, March 16, 2025
RFP Released and Open to Offerors	Mon, March 17, 2025
Register Date	Mon, March 24, 2025, 4:00pm HST
Virtual Pre-Proposal Conference (Mandatory)	Mon, March 31, 2025, 11:00am HST
Question Deadline	Mon, April 7, 2025, 4:00pm HST
Manager's Response to Offeror's Questions	Wed, April 9, 2025
Proposal Due Date	Fri, April 18, 2025, by 4:00pm HST
Best and Final Offers (optional)	Mon, May 5, 2025
Contractor Selection/Award of Contract (tentative)	May 2025
Contract Execution Date (tentative)	May 2025
Contract Tentative Commencement Date (tentative)	May 2025

1.5 VIRTUAL PRE-PROPOSAL CONFERENCE (Mandatory)

A mandatory virtual pre-proposal conference will be held on **March 31, 2025, at 11:00 a.m. HST**. The purpose of the conference is to review Manager's requirements; answer questions pertaining to the RFP; and provide additional information that may assist in the preparation of proposals. Additionally, floor plans, if necessary, of the Hawaii Convention Center will be provided during the conference as well. The Scope of Work and Rate Card will be reviewed during the conference.

Offerors should be prepared to invite all consultants or sub-consultants to the Pre-Proposal Conference.

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

Offerors interested in attending the conference should contact the Contracting Officer for a link to the virtual conference. Costs relating to attendance at the Pre-Proposal Conference shall be the responsibility of the attendee and shall not be reimbursed by Manager.

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

1.6 SUBMISSION OF QUESTIONS

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

Questions must be submitted in writing via email. All relevant written questions will receive an official written response from Manager and become addendums to the RFP. The only official position of Manager is that which is stated in writing and issued in the RFP as addenda thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response/statement, and may not be relied upon.

1.7 SOLICITATION REVIEW

Offerors should carefully review this solicitation for defects and questionable or objectionable matter. Comments concerning defects and questionable or objectionable matter must be made in writing and should be received by the Contracting Officer by **4:00 p.m. HST, on April 7, 2025**. This will allow issuance of any necessary amendments to the RFP. It will also assist in preventing the opening of proposals upon which award may not be made due to a defective solicitation package. Offerors may not raise any issues with the contents of the RFP after Proposals have been submitted.

1.8 RFP AMENDMENTS AND ADDENDA

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

1.9 CANCELLATION OF RFP

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

1.10 CONDITIONS AND LIMITATIONS

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

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

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

1.11 RULES OF CONTACT AND COMMUNICATIONS

As stated in Section 1.2, the Contracting Officer shall be the primary point of contact on the project for procurement and work-related issues throughout the term of the contract. Contact with Manager officials, employees, or representatives concerning this RFP while the solicitation process is in progress, except as expressly required or permitted by these General Instructions, the RFP Documents, or other instruction from Manager may result in disqualification. The solicitation process begins when the RFP is issued and will be completed with the award of the contract. Any contact determined to be improper, at the sole discretion of Manager, may result in disqualification.

SECTION 2 – SCOPE OF WORK/SPECIFICATIONS

2.1 INTRODUCTION

The Hawaii Convention Center (HCC) invites qualified vendors to submit bids for the procurement and operational readiness of an approximate 8,000-square-foot ice rink. The scope includes all necessary materials, equipment, training, and warranties to ensure successful implementation and long-term functionality. The goal of this procurement is to have the Ice Rink ready and operational by November 2025.

2.2 SCOPE OF WORK

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

The Design-Builder shall provide all engineering and design services necessary for the execution of this project. Design-Builder shall, during the Pre-Proposal Conference/Site Visit, and pre-construction, inspect the work site, and identify existing conditions that may affect the execution of this scope of work.

Design-Builder must plan the work accordingly and consider any workarounds, if any, in his/her bid. Existing conditions that may cause delay or additional work in the execution of this scope of work shall neither be considered nor approved as a change order.

The procurement and delivery of an 80' x 100' Ice Rink and Chiller will be a design-build project. The project will include the fabrication, delivery, installation, start up, and first removal of the Ice Rink and Chiller. Provide construction services to provide a complete turn-key project to deliver and install an Ice Rink and Chiller.

A Mechanical Systems Technician, or comparable personnel, shall be available to troubleshoot and resolve any issues related to the chiller and/or ice floor as they arise. While on-site presence is not required at all times, the technician must be able to respond and perform necessary repairs within two hours to ensure continuous and reliable operation.

Design-Builder will provide the following equipment & personnel:

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

2.2.1 All PPE and safety equipment required to complete services.

2.2.2 Certifications

- a. Copies of certifications for staff that may be utilizing equipment requiring specialized certifications per Federal Occupational Safety and Health (OSHA) and Hawaii Occupational Safety and Health (HIOSH) regulations.
- b. Copies of Fall Protection certifications that are required for use of ariel lifts at the HCC.

2.2.3 Preconstruction and Installation Plan

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

2.2.4 Scope of Work Detail

This bid encompasses both the chiller and the ice rink, along with all the necessary accessories and materials required for full operational readiness.

The chiller must be included in the bid as a purchase. However, if the chiller cannot be delivered and installed at the same time as the ice rink due to lead times or other constraints, the vendor must provide a rental chiller option for the first year. First install is tentatively scheduled for Late October/Early November 2025, and the first removal is tentatively scheduled for Late December 2025/Early January 2026.

All costs associated with the rental, including delivery, setup, operation, and first removal, should be clearly detailed in the bid.

Vendors must ensure that all accessories, including hoses, fittings, chemicals,

and other necessary materials, are included for seamless integration of the chiller and ice rink.

Skating Surface

- Approximately 100' x 80' with all related supplies to support this size skating surface, including (but not limited to):
 - Hosing, chemicals, liners, hardware, insulation, and materials.
- Ice Rink must fit between columns in HCC's Exhibit Halls. Columns are 90' apart in all directions.

Chiller Specifications

- Air-cooled chiller. Sufficient to support an 8,000 sq. ft. skating surface in an indoor environment.
- Must integrate with existing power infrastructure, 480v/3-phase/400 amps
 - If this is not sufficient power for chiller equipment, please list the power requirements.
- Include all necessary connections (length TBD).
- Cooling Medium: Specify glycol mixture and antifreeze requirements.
- Start-Up: Include on-site technical support for installation and initial operation.
- Provide detailed options for ongoing maintenance, service plans, and availability of replacement parts.
- Must include a digital interface for temperature and performance monitoring.
- Provide noise specifications to ensure compliance with local noise ordinances.

Boiler Specifications

- High-efficiency boiler designed for rink operations. Must meet heat requirements for the specific size of the rink and ensure efficient ice resurfacing.
- Must fit existing power infrastructure, 480v/3-phase/400 amps
 - If this is not sufficient power for chiller equipment, please list the power requirements.
- Include all required connections (length TBD).
- Incorporate automated controls for temperature regulation and diagnostics.
- Start-Up: Include technical support for installation and operational

training.

- Safety Features: Must include pressure release valves, over-temperature shutoffs, and insulation to minimize energy loss.
- Maintenance Options: Provide plans for routine maintenance, replacement parts, and emergency services.

Pump Specifications

- High-capacity pump to circulate glycol and other cooling fluids efficiently.
- Specify flow rate to support an 8,000 sq. ft. surface.
- Must fit existing power infrastructure, 480v/3-phase/400 amps
 - If this is not sufficient power for chiller equipment, please list the power requirements.
- Corrosion-resistant materials suitable for glycol or other refrigerants.
- Include all required hose fittings and connections (length TBD).
- Must meet or exceed industry standards for energy efficiency.
- Provide technical support for calibration and integration with chiller and boiler systems.
- Outline maintenance plans, availability of replacement parts, and technical service schedules.
- Include monitoring systems for flow rate, pressure, and performance.

Additional Equipment

- Edger
 - Must be battery powered. Include rechargeable batteries and a charging station.
 - Capable of precise edging along dasher boards and tight corners.
- Resurfacers:
 - Must be battery-powered and provide efficient ice resurfacing for an 8,000 sq. ft. surface.
 - Include onboard water tanks, shaving capabilities, and snow collection bins.
 - Provide an intuitive user interface for operation and maintenance.
- Ice Floor:

- Provide complete insulation, liners, and backing to ensure optimal thermal performance.
- Include glycol or antifreeze solutions suitable for the rink size.
- Include all required glycol or antifreeze solutions for initial fill and operations
- Dasher boards must cover the rink area with sufficient spares for future replacements.
- Accessories such as anchors, clamps, and fittings for secure installation.
- Dasher Boards:
 - Recreational style with durable materials suitable for high-impact use.
 - Include one resurface door and one entrance/exit door with easy-access mechanisms.
 - Supply three spare panels for every 100 installed panels, and two spare doors.
 - All required hardware (bolts, screws, brackets) must be included.
 - Offer color options for Cap Rail for HCC's approval.
- Skates and Accessories:
 - A full range of sizes for children and adults to accommodate maximum rink capacity.
 - Skating aids (e.g., balance supports) for beginners and accessible use.
 - Rubber mats for designated skate lace-up and walking areas to prevent damage to skates.
 - Skate racks with sufficient capacity for storage and organization.
 - Skate sharpeners with multi-angle functionality for precision sharpening.
 - Skates should be sharpened and ready to use on arrival.
 - Rubberized flooring around the rink must be non-slip and resistant to skate damage.

Transportation and Delivery

- Submit a detailed logistics plan, including estimated delivery and lead times for all equipment.
 - Ice Rink Floor System
 - Chiller, Pump, and Boiler
 - Ice Resurfacer
 - All additional equipment
- Include specifications for any equipment required for delivery and off-loading.
- Vendor is responsible for providing any equipment needed for off-loading and delivery at HCC.
- HCC has 5K forklifts on site that are rentable based on availability.
- Vendor shall provide a Start-Up Technician for the chiller/boiler/pump.
- Please provide lead time and anticipated delivery date of Chiller

Training

- Vendor shall provide installation, removal, and maintenance training for HCC Engineering staff at time of delivery, first installation, and first removal.
 - First Installation: Late October/Early November
 - First Removal: Late December/Early January
- Please provide a training logistics plan.
- Please provide information regarding when a technician will need to be present.

Ongoing Supplies and Support

- Provide pricing for future purchases of consumable goods including:
 - Liners, chemicals, and spare hardware.
 - Maintenance items (e.g., hoses, clamps, skate repair tools).
- A Mechanical Systems Technician, or comparable personnel, shall be available to troubleshoot and resolve any issues related to the chiller and/or ice floor as they arise. While on-site presence is not required at all times, the technician must be able to respond and perform necessary repairs within two hours to ensure continuous and reliable operation.

Maintenance Plan, Equipment/Material Testing, and Storage

- Specify requirements for testing materials during storage and long-term storage needs.
- Provide maintenance plan and schedule for
 - Ice Rink Floor System

- Chiller, Pump, and Boiler
- Ice Resurfacers
- Edger
- Other equipment requiring ongoing/regular maintenance

Future Expansion

- Ensure compatibility with potential future expansions of the rink.
- Please provide a price per square foot for additional skating surface.
- Please include an explanation on the life of the brand of ice rink floor system. Is the manufacturer planning to discontinue this brand and/or model? And any additional information as HCC plans future expansion.

Warranties

- Provide detailed warranty terms for all equipment and hardware.
 - Ice Rink Floor System
 - Chiller, Pump, and Boiler
 - Ice Resurfacers
 - Edger
 - Additional Equipment
- Please specify all requirements to maintain compliance with warranties.
- Specify expected life spans for all components.

Timeline/Lead Times

- Vendors must include proposed timelines and lead times for:
 - Manufacturing
 - a. Skating surface and all related materials, chiller, pump, boiler, hosing, and all additional equipment.
 - Delivery
 - a. Please include information on size and number of shipments
 - b. Please include information on equipment needed for delivery
 - Operational readiness
 - a. Include information on estimated operational readiness after delivery.
 - b. Please include information about a start-up technician.
 - c. Would a technician be present during delivery or first installation?
- Payment deposit timeline
 - When is the deposit deadline to have the rink on-site by October 1st, 2025?

2.2.5 General Requirements

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

satisfaction of HCC representative by the Design-Builder without any cost or impact to HCC and/or the project schedule.

- H. Work site shall be maintained in broom-clean condition at the end of each shift. All construction debris, old equipment and/or parts awaiting disposal, and/or tools and equipment shall be stowed in a manner so as not to pose a safety hazard to employees and the public; and as to not impact HCC event activity.
- I. Design-Builder shall be responsible for any demolition work that might be necessary to accomplish the work.
- J. Design-Builder shall properly recycle and dispose of the construction demolition materials. The quantity/weight of all recycled materials shall be tracked and submitted to HCC and the upon the completion of the project.
- K. Final job walk shall be conducted with HCC representative and punch list items, if any, shall be completed and all closed out documents received before final payment is made.
- L. Along with the bids, the Design-Builder shall submit a Project Outline and Schedule that includes, but is not limited to, project milestones (design work, major project tasks, testing/commissioning), along with estimated duration time frames for those milestones, and total project duration for the work required to complete this project.
- M. The Design-Builder shall be responsible for providing the exact function described herein and will be held to the operational criteria.

2.2.6 Principal Work in This Section

- A. The Work includes the design, supply, and installation of all components, specified or not, for the fabrication and installation of Museum Display Cabinets
- B. The Work also includes, all work as defined in the Overview of Scope above, and includes but is not limited to:
 - a. Provide construction services to provide a complete turn-key project to replace the existing system.
 - b. Address all remedial work if applicable.
 - c. Provide all temporary utilities as required to continuously support and maintain all existing utilities during the execution of the work.
 - d. Provide complete O&M Manuals.

- e. Testing, Licensing & certificate's & permits as applicable
- f. Client training for the HCC staff, with Video records as applicable.
- g. Client maintenance training.
- h. Provide a service proposal.

2.2.7 Quality Assurance

- A. All equipment provided by Design-Builder should meet specifications listed here in.
- B. Design-Builder shall obtain instructions & training for installation from manufacturer of each product.
- C. Design-Builder shall allow and arrange for a start-up technician or to perform a final commissioning test and demonstrate system functionality.

2.2.8 Submittal

- A. General
 - a. Do not commence work that requires review of any submittals until receipt of returned submittals with appropriate final action.
 - b. Do not submit substitute items that have not been approved.
 - c. Do not include requests for substitution (either direct or indirect) on submittals.
 - d. Submittals which deviate from the procedures outlined herein will be rejected in total without review. No allowance or extension of project time will be considered due to lost time associated with procedural deviation.
- B. Coordination of Submittals
 - a. Coordinate preparation and processing of submittals with performance of the work. Coordinate each separate submittal with other submittals and related activities that require sequential performance.
 - b. Coordinate the submittal of different units of interrelated work so that no submittal will be delayed by the Construction Manager's/Project Manager's, and HCC's review of a related submittal.
- C. Pre-Construction
 - a. Provide field investigation of all existing conditions.

- b. Incorporate and coordinate field investigations with HCC to properly inform the repair plan and constructability of the project.
- c. Report findings and recommendations based on field investigations and surveys.
- d. Product cut sheets for all products and materials.
- e. Recommended application and installation methods.
- f. Complete shop drawings of all work as required by the technical specifications.
- g. Provide drawings identifying all terminals and illustrating all device wiring connections.
- h. Provide elevations and detailing plans.
- i. Provide operating instructions.

D. Post Construction

- a. Record Documents including As-Built Documents.
- b. All preconstruction shop drawings updated to as-build condition.
- c. Provide product cut sheets for all equipment used.
- d. Provide operating manuals.
- e. Provide Warranty information, for all materials should be provided with start date and duration of warranty period stated.

2.4 APPROVALS

- 2.4.1 Obtain all necessary approvals and permits from local authorities for all materials to be supplied, methods of installation and system operations, as required herein and by local authorities, it is noted that the owner will pay for all permit fees, but Design-Builder is required to process permit applications
- 2.4.2 The entire installation, including materials and equipment shall meet or exceed the minimum standards and requirements of the following:
 - A. All applicable codes and editions as identified by the Architect/Engineer of Record on the approved City and County of Honolulu, Department of Planning and Permitting (DPP), Building Permit Set.
 - B. Underwriters' Laboratories, Inc. listing service.

- C. Codes as accepted and/or modified by the local Authorities:
 - 1. National Electrical Code.
 - 2. American Disabilities Act (ADA).
 - 3. Underwriters' laboratories, UL 1971 for Hearing Impaired.

2.5 EXECUTION SCOPE OF WORK

2.5.1 Installation

- A. Design-Builder shall execute the work in accordance with the approved Contract Documents, including the Drawings and Technical Specifications and in compliance with all the Standards listed therein.
- B. Design-Builder must schedule work according to available dates based on HCC's event schedule.
- C. Coordinate the review and approval of all outstanding Punchlist Items with design professional and the HCC.
- D. All cable labels shall be machine printed heat shrink type. Hand-written labels are not acceptable. Labels shall indicate device number and destination. Labels shall be located on both ends of each cable.
- E. Install and dress all device's wiring neatly.
- F. Install all devices in accordance with manufacturer's instructions and recommendations. Assure all devices maintain signal continuity throughout entire system.
- G. Install all mounting brackets to the structure.

2.5.2 Demonstration and Training

- A. In-house maintenance. Provide competent, factory authorized personnel to instruct and train HCC engineering personnel concerning the location, operation and troubleshooting of the installed systems. The instruction shall be scheduled in coordination with HCC's Representative after submission and approval of formal training plans.
- B. Also provide cost for annual maintenance by manufacturer if required by the warranty.
- C. Design-Builder shall supply two (2) printed sets and two (2) electronic copies of an Operations Manual & plans for the system. Manual must show all instructions, commands, screen shots and functions used in the course of operating the system in a normal or abnormal condition.

- D. Design-Builder shall supply two (2) printed sets and two (2) electronic copies of an Administration Manual for the system. Manual must show all instructions, commands, screen shots and functions used to administer the software and hardware.

2.5.3 Certification

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

2.5.4 Testing

- A. After work is completed, and prior to requesting the Acceptance Test, Design-Builder shall conduct a final inspection and pre-test all equipment and system features. Design-Builder shall correct any deficiencies discovered as the result of the inspection and pre-test.
- B. Design-Builder shall submit a request for the Acceptance Test in writing to HCC using an approved "Request for Acceptance Test" form, a copy of which will be provided.
 - 1. This request shall be submitted to HCC no less than 7 days prior to the requested test date.
 - 2. The request for Acceptance Test shall constitute a certification from Design-Builder that all work is complete and in compliance with the Contract Documents, Manufacturer installation specifications, that all systems have been tested, and all corrections have been made.
 - 3. Acceptance Test shall be scheduled based on HCC's availability.
 - 4. Design-Builder shall provide the services of no fewer than 2 technicians to perform the Acceptance Test.
 - a. Technicians performing the Acceptance Test shall have been involved in the installation of this project and shall be thoroughly familiar with all aspects of the work.
 - b. Technicians shall be equipped with portable two-way radios or cell phones for use during the test.
 - 5. Design-Builder shall provide all ladders, tools, test equipment, and other facilities needed to accomplish the Acceptance Test.
 - 6. During Acceptance Test, Design-Builder shall demonstrate all equipment and system features to HCC.
 - a. Design-Builder shall fully cooperate with the HCC and provide assistance with the inspection and test.

2.5.5 As Built Drawings

- A. The Design-Builder shall maintain a complete set of prints of design drawings on-site as the work on the exterior security camera system is being completed. As

work is installed, Design-BUILDER shall update prints, in detail of location of work including all critical dimensions.

- B. Upon completion of the project, Design-BUILDER shall provide Manager with as-built drawings in Microsoft Visio format.
- C. The Design-BUILDER shall provide four (4) sets of as-built drawings, plus two (2) sets of Visio disks to Manager.

2.6 WAGE RATES AND OTHER FEES

2.6.1 Contractor shall pay prevailing wage rates as required by Hawaii State law for all personnel working on State Public Works Projects and who perform work on this project. Fully loaded rates will include all wages, benefits and other overhead loadings.

2.6.2. Contractor shall provide information on mark-up percentages on parts and materials, subcontracts, etc. as required by this RFP or if requested.

2.6.3. Contractor shall include all taxes and fees in the pricing proposal.

2.7 INSURANCE

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

2.8 BONDING

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

2.9 MISCELLANEOUS REQUIREMENTS

2.9.1. Contractor shall keep and maintain all of its work areas at the Project site in a neat and orderly fashion and free from obstacles and debris. Contractor shall deposit trash into receptacles provided by Manager.

2.9.2. Contractor shall comply with all federal, state and local laws, regulations and ordinances, including occupational safety and health standards applicable to the performance of the service specified.

2.9.3. Contractor shall be afforded reasonable access to all necessary systems, equipment and areas when required to perform the services specified, subject to reasonable security restrictions as directed by Manager. Contractor shall not be responsible for any equipment malfunction, injuries, or damages of any nature due to an unreasonable prevention or denial of access to perform services.

2.9.4. Contractor shall pass on to Manager the benefit of any warranties or guarantees of all manufacturers, suppliers and subcontractor providing labor and/or materials in connection with the services.

2.9.5. Contractor shall maintain competent and sufficient staff assigned to the Project to perform the services specified. All Contractor employees assigned to the Project shall maintain a neat and professional appearance at all times while performing the services. If possible, Contractor's employees shall wear properly identified company uniforms at all times consisting of shirts with sleeves, long pants and appropriate shoes. Contractor's employees shall be fully and properly clothed at all times while performing the duties set forth.

2.9.6. Contractor shall cooperate with Manager in obtaining and maintaining appropriate and necessary security clearances, if needed, for its employees in connection with the performance of the services.

2.9.7. Manager will provide adequate workspace and storage area at the HCC for use by the Contractor in performing the services required by this RFP.

2.9.8. The Contractor shall be solely responsible for the satisfactory completion and quality of all work performed as determined by Manager.

2.9.9. All work, services, or products developed must comply with All applicable City and County, State, and Federal rules, regulations, codes, and guidelines.

2.9.10 Manager shall hold the Contractor liable for all the acts of its employees.

2.9.11 Contractor shall ensure compliance with the "Hawaii Convention Center Health and Safety Procedures" provided as Appendix E.

2.9.12 Once the contract is awarded, the Contractor shall communicate directly with HCC's Contracting Officer regarding the performance of the Scope of Work, and Contractor shall cooperate fully with the Contracting Officer in every way.

2.9.13 Should a disagreement arise between the Contractor and Manager in regard to the work performance of specific service requirements within the contract specifications, the directives of Manager shall prevail. Contractor's failure to comply with Manager's directives shall be deemed cause for corrective action and subject to contractual remedies.

2.9.14 Should the Contractor discover any discrepancy in the specifications, the Contractor shall immediately notify the Manager before proceeding any further with the work, otherwise, the Contractor will be held responsible for any cost involved in correction of work placed due to such discrepancy.

2.9.15 If any work is not in full compliance with these Specifications, the Contractor shall make all necessary corrections to the full satisfaction of Manager and at no additional cost to Manager. The Contractor shall perform corrective work within the period allowed by the Contract Documents or Manager.

2.9.16 The Contractor shall immediately remedy any defects caused by negligence of the Contractor or its employees. The Contractor shall exercise care and shall provide all necessary protection to prevent injury and/or damage.

2.9.17 The Contractor shall be required to protect the occupants and the general public from any unsafe conditions during the performance of services and/or as a result of the services.

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

2.9.19 All employees will be required to carry a Contractor issued, picture ID, which will be required to be worn at all times while working at the Hawaii Convention Center. Contractor is to provide each employee with a plastic sleeve with clip to hold the ID.

2.10 MANDATORY CLEARANCES

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

2.11 INSPECTIONS

Manager shall be allowed to monitor the Contractor's job performance at any time. Manager may require the Contractor to accompany its designated representative in conducting evaluations.

2.12 REMOVAL OF EMPLOYEES

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

2.13 FORM OF CONTRACT AND PRECEDENCE OF DOCUMENTS

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

2.14 GENERAL TERMS AND CONDITIONS

At all times, the Contractor shall comply with the General Terms and Conditions provided herein as Appendix C.

2.15 SPECIAL CONDITIONS

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

2.16 HCC HEALTH AND SAFETY PROCEDURES

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

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

2.17 RENTAL EQUIPMENT

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

SECTION 3 – PROPOSAL SUBMITTAL REQUIREMENTS

3.1 INTRODUCTION

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

3.2 PROPOSAL PREPARATION

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

3.3 DISQUALIFICATION OF PROPOSALS

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

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

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

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

The proposal shows any noncompliance with applicable law.

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

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

3.4 SUBMISSION OF PROPOSALS

Each Offeror may submit only one (1) written proposal, addressed to the Contracting Officer via email to hccrfp@hccasm.com no later than **4:00 p.m., HST, on April 18, 2025** the "Proposal Due Date", identified in paragraph 1.4 of Section 1. **Proposals received after this time/date may be rejected.**

3.5 PUBLIC INSPECTION

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

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

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

3.6 ICE RINK AND CHILLER PROCUREMENT PROPOSAL

The ICE RINK AND CHILLER PROCUREMENT proposal shall include the following categories:

COVER LETTER
SUMMARY OF PROPOSAL
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
PERSONNEL ORGANIZATION AND STAFFING
LIST OF SUBCONTRACTORS AND SUPPLIERS
EQUIPMENT PLAN
INSTALLATION PLAN
TRAINING PLAN
PRICE SUBMITTAL FORM – RATE CARD
CERTIFICATE OF VENDOR COMPLIANCE via Hawaii Compliance Express
(<http://vendors.ehawaii.gov>)

3.6.1 PROPOSAL COVER LETTER

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

3.6.2 SUMMARY OF PROPOSAL

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

3.6.3 BACKGROUND, QUALIFICATIONS AND EXPERIENCE

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

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

3.6.4 PERSONNEL ORGANIZATION AND STAFFING

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

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

3.6.5 LIST OF SUBCONTRACTORS AND SUPPLIERS

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

3.6.6 EQUIPMENT AND INSTALLATION PLAN

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

Contractor may include options in its proposal that include alternative designs, equipment, methods and/or materials that address the scope of work provided herein. If the Contractor includes alternative designs, equipment, methods and/or materials, the Contractor shall specify the advantages and disadvantages of the proposed alternative

designs, equipment, methods and/or materials as it relates to the repair, upgrade, renovation, or improvement of the equipment and specifications.

3.6.7 COST PROPOSAL

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

3.6.8 CERTIFICATE OF VENDOR COMPLIANCE

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

3.6.9 ADDITIONAL QUESTIONS/REQUESTS FOR INFORMATION

In addition to the above, the Offeror must prepare and submit information and/or answers to any additional questions or requests that Manager requires.

3.7 CONTRACTOR'S LICENSE

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

3.8 CERTIFICATION OF INDEPENDENT COST DETERMINATION

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

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

3.9 MODIFICATION OR WITHDRAWAL OF PROPOSALS

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

An Offeror may withdraw a proposal already received prior to the due date by submitting to Manager a written request for withdrawal executed by the Offeror's authorized

representative. The withdrawal of a proposal does not prejudice the right of an Offeror to submit another proposal within the time set for receipt of proposals.

SECTION 4 – EVALUATIONS

4.1 INTRODUCTION

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

4.2 PROPOSAL EVALUATION COMMITTEE

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

4.3 EVALUATION PHASES

Evaluation phases will be conducted as follows:

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

4.3.1 INITIAL PROPOSAL EVALUATION

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

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

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

4.3.3 DISCUSSIONS WITH OFFERORS **(optional)**

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

4.3.4 BEST AND FINAL OFFERS (optional)

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

4.3.5 EVALUATION OF BEST AND FINAL OFFERS (if necessary)

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

4.3.6 RECOMMENDATION FOR CONTRACT AWARD

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

4.4 EVALUATION CRITERIA AND VALUE WEIGHT PERCENTAGES

<u>Evaluation Criteria</u>	<u>Value/Weight</u>
Offeror's Background, Qualification, Experience, and References.....	15%
Offeror's Delivery Logistics Plan and Lead Times.....	20%
Offeror's Compliance with Equipment Specifications.....	30%
Offeror's Cost Proposal	35%

4.5 EVALUATION SCORING SYSTEM

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

Note: In determining the total score, the Offeror's cost proposal with the lowest costs will receive the highest available rating allocated to costs. Each proposal that has a higher cost than the lowest will have a lower rating for costs.

SECTION 5 – AWARD OF CONTRACT

5.1 AWARD OF CONTRACT

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

5.2 CONTRACT AWARD NOTIFICATION

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

5.3 CONTRACT EXECUTION REQUIREMENTS

5.3.1 AGREEMENT (CONTRACT) DOCUMENTS

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

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

5.3.2 GENERAL CONDITIONS

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

5.3.3 SPECIAL CONDITIONS

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

5.3.4 PROOF OF REQUIRED PERMITS

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

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

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

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

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

5.3.6 CONTRACT EXECUTION

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

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

5.4 CONTRACT COMMENCEMENT DATE

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

5.5 PROTESTS

Bid protests, as described in Chapter 7 of HRS 103D, will not be considered by Manager. Offeror(s) may object to an award to another Offeror by sending the Contracting Officer a written objection letter which contains the basis of the objection. The written objection letter must be received by the Contracting Officer within five (5) business days after the

notice of award is sent to all Offerors. The objection will be reviewed by the Chief Procurement Officer (“CPO”) for the Manager, and a written decision will be issued in response to the written objection letter within ten (10) business days. The decision of the CPO is final and binding on the Offeror objecting to the award.

5.6 ACCEPTANCE OF TERMS AND CONDITIONS

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

APPENDIX A

PROPOSAL FORM – RATE CARD

Ice Rink and Chiller Procurement
for Hawaii Convention Center

PROPOSAL FORM - Rate Card

Project Cost	COST	Comments/Clarifications
Labor	\$ -	
Materials	\$ -	Refer to list of equipment on second tab "B. Equipment"
Equipment Rentals	\$ -	
Shipping/Delivery/Off Loading	\$ -	
Initial Rink Installation/Removal Training	\$ -	
Chiller Start Up Technician	\$ -	
Mechanical Systems Technician	\$ -	
Project Net Total Cost	\$ -	
Chiller Rental		
Chiller Rental	\$ -	
Rental Delivery and Removal	\$ -	
Rental Start Up	\$ -	
Maintenance Technician	\$ -	
Chiller Rental Total Cost	\$ -	
Margins and Adjustments		
General Conditions	\$ -	
Bond & Insurance	\$ -	
Overhead and Profit	\$ -	
General Excise Tax	\$ -	
Margins and Adjustments Total Cost	\$ -	
Soft Costs		
Project Allowance		
--Define if used	\$ -	
--Define if used	\$ -	
Soft Total Costs	\$ -	
Total Cost for the Project	\$ -	
Schedule of rates/ Per Hours	Hourly Rate	
Mechanical Systems Technician		
Chiller Start Up Technician		
JOB TITLE - DEFINE IF USED		
	Cost	
Annual Maintenance Plan	\$ -	Provide a cost proposal for annual maintenance of chiller. Providing this pricing does not guarantee a maintenance contract, as the final selection will be subject to a separate review process.

Ice Rink and Chiller Procurement
for Hawaii Convention Center

PROPOSAL FORM - Rate Card - Materials

Description	Unit	Quantity	Rate	Total Cost	Notes /Suggestions
Portable Ice Rink (100' x 80' surface, ~8,000 sq. ft.)					
- Portable Ice Floor				\$ -	
- Glycol				\$ -	
- Insulation (25psi, 1")				\$ -	
- Aluminium Corner Profiles				\$ -	
- Steel Pallet				\$ -	
- Ice Floor Liner				\$ -	
- Plastic Molded Header Covers				\$ -	
- Draining Pump (110V)				\$ -	
- Ice Resurfacer				\$ -	
- Edger				\$ -	
Chiller - Purchase					
- Chiller				\$ -	
- Chiller Pumps				\$ -	
- Chiller Hose Package				\$ -	
- Delivery and Install				\$ -	
Boiler Package					
- Boiler				\$ -	
- Boiler Pump				\$ -	
- Boiler Hose Package				\$ -	
- Delivery and Install				\$ -	
Dasher Boards					
- Recreational Clear Skating Boards				\$ -	
- Recreational Clear Board Doors				\$ -	
Additional Equipment					
- Skates				\$ -	
- Helmet				\$ -	
- Skate Racks				\$ -	
- Skate Sharpener				\$ -	
- Ice Base				\$ -	
- Skate Lace Area Rubber Flooring				\$ -	
- Accessible Skate Aids				\$ -	
- Skate Repair Kit				\$ -	
Attic Stock					
- Clamps and hoses				\$ -	
- Dasher board parts				\$ -	

APPENDIX B

AGREEMENT OF GOODS AND SERVICES

AGREEMENT FOR GOODS AND SERVICES

THIS AGREEMENT FOR GOODS AND SERVICES (this "Agreement") is made effective as of **XX/XX/XX** by and between, AEG Management HCC, LLC ("**Company**") and **AWARDEE** ("**Vendor**").

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 December 30, 2024 between the Hawai'i Tourism Authority ("HTA"), a duly organized authority of the State of Hawai'i (the "State") and Company.

B. Vendor provides the following goods and services Ice Rink and Chiller Procurement as described in Exhibit "A", pursuant to 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 Vendor, and Vendor 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, Vendor 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, Vendor shall furnish or provide all of the materials and all other items necessary to perform and provide the Goods and Services and to carry out and perform all of Vendor's obligations under or pursuant to this Agreement.

1.5 Upon request from Company, Vendor shall immediately reassign or remove from the performance of the Goods and Services hereunder any of its employees or personnel supplied by Vendor, 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 Vendors (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, Vendor shall act in the best interests of the 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 Vendor 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 The Company, the State of Hawai'i and/or the HTA may audit the books and records of Vendor relating specifically to its performance of Service s under this Agreement, related to cost or pricing data, or any state contract, including sub-contractors, 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, Vendor shall comply with the provisions of the Hawai'i Convention Center Health and Safety Procedures Section 1 – Vendor Policy as set forth on Exhibit B attached hereto and made a part hereof.

1.13 Prior to the execution of the Agreement, Vendor 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 Vendor 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".

Vendor 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 **XX/XX/XXXX**, ("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. Please note that Company's management agreement currently is set to expire on December 31, 2024. The Manager is currently operating the Hawaii Convention Center pursuant to a Management Agreement with HTA is terminated for any reason, or expires pursuant to its terms, then the Contractor agrees to enter into an assignment from Manager to either (1) HTA, or (2) the new manager of the Hawaii Convention Center. In the event of an assignment from Manager to the HTA or the new manager, the, the Contractor agrees to continue providing the goods and services required by this Agreement, and continue to be bound by all the terms and provisions herein In the event on this Agreement is assigned to the HTA, the Contractor agrees that the assignment will add requirements that the Contractor must follow State contracting laws, including, but not limited to, the Hawaii State Procurement Code (HRS Section 103D et seq.), and paying prevailing wages.

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

4. **SAFETY AND LEGAL REQUIREMENTS; AUTHORITY; WARRANTIES.** Without in any way limiting any other term or provision of this Agreement or any obligation of Vendor hereunder, Vendor 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 Vendor and to the Services to be provided by Vendor 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 Vendor 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 – Vendor Policy as set forth on Exhibit B

Vendor further represents and warrants that (A) it is a licensed Vendor; (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 Contract; and (E) the execution, delivery and performance of this Agreement by Vendor 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 Vendor to Company. If applicable.

Vendor 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. Vendor 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. Vendor 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 Vendor'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, Vendor 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. Vendor agrees to indemnify, defend and forever save and hold harmless Company, AEG Venue Management Holdings, LLC, ASM Global Parent Inc., State of Hawai'i, Hawai'i Tourism Authority (HTA), and their respective affiliates, licensees, lenders, Vendors, as well as each of their respective officers, directors, partners, members, shareholders, employees, agents, representatives, successors and assigns, (hereinafter referred to as "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 Vendor to perform the Services in accordance with the terms of this Agreement or any act or omission of the Vendor, including its employees, officers, agents or sub-contractors. 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 Vendor under or pursuant to this Agreement, Vendor shall, at its sole expense, procure and at all times maintain during the term of this Agreement all of the following insurance:

- (a) Vendor 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 Vendor, Company and their Vendors, 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; (iii) following form Umbrella or Excess Liability Coverage with a limit of at least \$5,000,000.

- (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 Vendors, 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) 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 Vendor (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 6 (f & g) below. Such insurance shall include a waiver of subrogation in favor of Company.
- (d) To the extent applicable, Vendor shall obtain and maintain a Personal Property Floater and/or Miscellaneous Equipment insurance coverage on all of Vendor's personal property, trade fixtures, and Vendor'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 Vendor for the replacement of personal property, tools & equipment. Vendor 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 Vendor'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 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 Vendors 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 Vendor 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 by Company, Vendor shall promptly furnish loss information concerning all liability claims brought against Vendor (or any other insured under Vendors 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) Vendor shall require and verify that all sub-contractors maintain insurance meeting all the requirements as broad as stated herein and that they name Vendor and Company Indemnitees as Additional Insureds.
- (j) All insurance coverage available to Vendor and any available proceeds in excess of specified minimum limits shall be available to Company.

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

If Vendor 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 its costs and expenses in connection therewith, including reasonable attorneys' fees and costs. Notwithstanding the foregoing, Vendor 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 Vendor's performance of the Services. Upon request of Company, Vendor shall furnish evidence satisfactory to Company regarding payment of all of Vendor's obligations under this Agreement by supplying Company with appropriate releases of liens executed by all applicable materialmen, suppliers and sub-contractors 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 sub-contractors to determine the current status of indebtedness, and may, upon reasonable evidence of a claim of non-payment by a sub-contractors, supplier or materialman, make checks jointly payable to Vendor and the materialmen, sub-contractor or supplier, said sums to be deducted from amounts owing to Vendor. This contractual right of Company to pay Vendor 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. Vendor shall furnish from time to time, upon request of Company, an affidavit specifying the names of all materialmen, suppliers and sub-contractors furnishing labor, services or materials in connection with the Goods and Services.

8. **WAIVER BY VENDOR.** Vendor agrees that Company shall not be responsible for any loss or damage to any property of Vendor 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, Vendor 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 Vendor, (ii) Company immediately upon notice to Vendor if Company determines, in its sole discretion, that Vendor has failed to deliver any of the Goods required by this Agreement, any of the Services performed or to be performed by Vendor are unsatisfactory, or if Vendor fails, refuses or neglects to perform each and every one of the Services to be performed by Vendor under or pursuant to this Agreement or upon the breach by or failure of Vendor to perform any of its obligations or covenants under this Agreement, or (iii) Vendor 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 Vendor 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, in the event that Company's management contract with the Hawaii Tourism Authority (HTA) is terminated by HTA or the State due to the expiration of the management contract, the Contractor agrees that this Contract in its entirety shall be assigned to the HTA, and HTA will thereafter assume the obligations of Manager for the remainder of the term of this Contract. In the event this Contract is assigned to HTA, the Contractor agrees to continue to provide the Goods and Service required by the terms of this Contract pursuant to the terms stated herein, and for the compensation agreed upon herein.

10. **INDEPENDENT VENDOR STATUS.** Vendor is engaged hereunder as an independent Vendor 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 Vendor, 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 Vendors, 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 Vendor. No officer, employee, agent, or servant of Vendor shall be deemed at any time to be an employee, servant, or agent of Company for any purpose whatsoever. Vendor 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.** Vendor 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) Vendor 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.

Vendor hereby irrevocably assigns to Company all of his right, title, and interest in and to the products (including, all surfboards and display items created pursuant to the terms of this Agreement) and any other products furnished or rendered by Vendor hereunder of whatever kind and nature, including all audio, audiovisual and photographic materials produced by Vendor 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 Vendor pursuant to this Agreement (the "**Copyrights**"), together with all extensions and renewals of the Copyrights, throughout the world. Vendor 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. Vendor 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. Vendor 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, Vendor and its officers, directors, shareholders, employees, agents, Vendors and representatives may gain access or be exposed to certain confidential and proprietary information relating to the business of Company or its affiliates. Vendor 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, Vendors 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 Vendor, nor may any of Vendor'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 Vendor 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 Vendor hereunder, and Vendor 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

Vendor: Awardee:
 Address:
 Attention:

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 The Request for Bid (RFB 2024-23) for the Common Area Furniture Refurbishment including all addenda, attachments, and amendments, Vendor's Bid dated 11/12/24 to the RFB, 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 affect 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 Vendor or Vendor'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, Vendor hereby assigns and transfers to Company all right, title and interest of Vendor and any of its employees, vendors, sub-contractors or any third party engaged by Vendor 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 Vendor and without any restrictions. Vendor shall retain no ownership, interest, or title in the Documents and Reports. Vendor 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. Vendor 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.

19. ENUMERATION OF DOCUMENTS MADE PART OF THIS AGREEMENT.

This Agreement is comprised of the following documents:

- .1 This Agreement for Goods and Services
- .2 Exhibit A- Goods and Services and Compensation
- .3 Exhibit B- Health and Safety Procedures
- .4 Exhibit C- List of Equipment
- .5 Attachment A- Request for Bid 2025-5
- .6 Attachment B- Proposal for RFB 2025-5

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

VENDOR:

By: _____
Name:
Title:

COMPANY:

By: _____
Name: Teri Orton
Title: General Manager

EXHIBIT A

HAWAII CONVENTION CENTER

GOODS AND SERVICES COMPENSATION

Goods

Vendor shall deliver the following Goods to the Facility:

1. Ice Rink (80' x 100' skating surface)
2. Air-cooled chiller with the capacity to meet the requirements of an 80' x 100' indoor skating surface and support future expansion.

Services

Vendor shall perform the following Services:

Manufacture 80' x 100' Ice Rink and all supporting materials and equipment
Coordinate delivery of Ice Rink and Chiller materials and equipment
Initial start up and installation of Ice Rink and Chiller

Compensation

- For full and complete compensation for the good and Services, Company shall pay Vendor in the total amount of \$X,XXX,XXX
- Company shall pay deposit of 50% of contract upon executed agreement.
- Vendor shall provide finalized invoices to Company throughout the Term of the Agreement, and Company shall pay Vendor within thirty (30) days upon receipt of all invoices. The final invoice shall be provided by Vendor to Company within thirty (30) days after the final delivery of the Goods. Company shall determine and confirm with Vendor that the Goods are of good quality, and free from any faults and defects prior to receiving the final invoice.

SCHEDULE. Vendor to provide equipment by XX/XX/XXXX.

COMMENCEMENT. Vendor 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, Vendor shall achieve substantial completion of the Goods and Services no later than end of business on XX/XX/XXXX (the "**Substantial Completion Date**"). Substantial completion of the Goods and Services shall occur upon Vendor's completion of the Goods and Services in good and workmanlike manner.

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

EXHIBIT B

HAWAII CONVENTION CENTER

HEALTH & SAFETY PROCEDURES – SECTION 1 – VENDOR POLICY

(See Attached)

APPENDIX C

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 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
 - b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

- a. The cost or pricing data, and
- b. A state contract, including subcontracts, other than a firm fixed-price contract.

29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.

If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.

30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.

31. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.

33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

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

c. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.

APPENDIX D

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 E

HCC HEALTH AND SAFETY PROCEDURES

HAWAII CONVENTION CENTER
HEALTH & SAFETY PROCEDURES - CONTRACTOR POLICY

OVERVIEW:

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

POLICY:

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

PROCEDURE:

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

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

I. **HEALTH, SAFETY AND ENVIRONMENT**

A. **Compliance**

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

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

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

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

B. **Responsibilities**

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

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

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

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

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

C. **Health and Safety Site Control**

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

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

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

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

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

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

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

E. **Personal Protective Clothing and Equipment**

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

F. **Security Checks**

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

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

II. **ACCESS TO THE FACILITY**

A. **Access Control**

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

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

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

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

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

B. **Means of Access**

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

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

C. **Daily Responsibility**

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

D. **Event Contractor Use of Wristbands**

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

E. **Before/After Shift**

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

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

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

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

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

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

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

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

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

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

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

IV. **EQUIPMENT SAFETY**

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

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

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

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

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

V. **HAZARDOUS WORK AND MATERIALS**

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

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

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

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

VI. **SPECIAL REQUIREMENTS**

A. **Noise Control**

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

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

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

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

B. Construction Barricades

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

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

C. Quarterly Meeting

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

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

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

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

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

Revised: 2/2023.

APPENDIX F

AGREEMENT FOR RENTAL OF EQUIPMENT (WITHOUT OPERATOR)

AGREEMENT FOR RENTAL OF EQUIPMENT (Without Operator)

This Agreement is entered into effective as of _____, 20__ by and between the Hawai'i Convention Center ("HCC"), State of Hawai'i, through its manager AEG Management HCC, LLC ("Manager"), and _____ ("Renter"), whose business address, phone, fax and email are as follows:

1. Manager manages the Hawai'i Convention Center ("the HCC") under a management contract with the State of Hawaii ("State"). The State owns certain equipment used by Manager in the performance of its management contract. The equipment hereunder is State property, which may be rented for the convenience and use of the Renter.
2. The Renter is a licensee, or a sub-contractor of licensee which has been granted a license to conduct an event or a vendor performing procured services at the Hawai'i Convention Center.

3. Equipment Rented.

Manager agrees to permit the Renter to utilize within the confines of 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 Manager's 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 HCC and its immediate surroundings within the area(s) pre-approved by Manager 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 HCC's Maintenance Manager or such designee.
- d. Check-in at Security Base. Ensure that the equipment is fully operational upon acceptance of the equipment and submit the related HCC form with the Maintenance Manager or their designee.
- e. Immediately halt use of any equipment and bring to the attention of the Maintenance Manager any equipment operating deficiencies or problems.
- f. Ensure that equipment is under positive control of the Renter at all times and that no unauthorized individuals are permitted to utilize the equipment.
- g. Ensure that all safety and operating rules are strictly followed. This includes, but is not limited to, the use of a hard hat and close-toed shoes by any and all parties while using equipment items 3a, 3b, 3c, 3e, or 3f above. All related items must be supplied by the Renter.
- h. Be fully responsible for any damage to or loss of the equipment.
- i. Be fully responsible for any and all damages caused by operation of the equipment.

6. Statement of Waiver.

The Renter waives any and all claims against the Manager Indemnitees as defined below from any and all claims including consequential damages arising from the use and/or operation of subject equipment by Renter, its employees, agents, and/or assigns.

7. Indemnification.

The Renter shall defend, indemnify, and hold harmless the State of Hawaii, the Hawai'i Tourism Authority (HTA), the Hawai'i Convention Center, Manager, ASM Global Parent, Inc., AEG Facilities, LLC, AEG Venue Management Holdings, LLC, each of their affiliates or related entities, and each of its and their respective principals, shareholders, members, partners, officers, directors, employees, representatives, agents, and contractors (sometimes collectively referred to herein as the "Manager Indemnitees" and individually as a "Manager Indemnitee") 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 Manager 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 Manager Indemnitees as additional insureds 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.

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 Manager or its 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 Manager. 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 Manager 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.

MANAGER
AEG MANAGEMENT HCC, LLC

BY: _____ Date _____
Name
Title: _____

RENTER

BY: _____ Date _____
Signature

Title

APPENDIX G

ACKNOWLEDGEMENT FORM

HCC RFB – 2025-5
Ice Rink Procurement

ACKNOWLEDGEMENT OF TERMS

To ensure clarity and acknowledgment of the content within this RFB, we kindly require proposers to initial each section following their review. Your initials serve as confirmation of understanding and agreement with the respective portions and expected deliverables outlined in the document. **This form shall be submitted as part of the Design-Builder's proposal.**

- _____ 1. Draft Contract

- _____ 2. Liquidated Damages (if applicable)

- _____ 3. Bond Requirements (if applicable)

- _____ 4. Insurance Requirements

- _____ 5. Scope of Work

- _____ 6. Add Alternates (if applicable)

- _____ 7. Deliverables (if applicable)
 - Cost Proposal
 - Installation Plan
 - Logistics Plan and Lead Times (Deposit deadline for Ice Rink to be on-site by October 2025)
 - Equipment Specifications
 - Company background & references