UFISINAN I MAGA'HÅGA
OFFICE OF THE GOVERNOR

LOURDES A. LEON GUERRERO
MAGA'HÅGA • GOVERNOR

JOSHUA F. TENORIO
SIGUNDO MAGA'LÅHI • LIEUTENANT GOVERNOR

MEMORANDUM

May 8, 2020

TO: **Mr. Lester Carlson, Jr.**
Director
BUREAU OF BUDGET & MANAGEMENT RESEARCH

Mr. Edward Birn
Director
DEPARTMENT OF ADMINISTRATION

FROM: **LOURDES A. LEON GUERRERO**
I Maga'hågan Guåhan
Governor of Guam

Re: Emergency Purchases for Quarantine / Isolation Facilities (Bridge Aina Le'A, LLC dba Perlas Courte Condominiums)

Buenas yan Håfa Adai,

While no cases had yet been confirmed in Guam, on March 14, 2020, I declared a state of emergency to respond to the outbreak of Novel Coronavirus (COVID-19) that had been spreading throughout the continental United States and the rest of the world. In recognition of the emergent conditions that were present, I issued Executive Order No. 2020-03 in which I invoked the statutory authority set out in 10 G.C.A. § 19403(a). Specifically, § 19403(a)(1) allows the Governor to "suspend, the provisions of any regulatory statute prescribing procedures for conducting local business, or the orders, rules and regulations of any government of Guam agency, to the extent that strict compliance with the same would prevent, hinder or delay necessary action (including emergency purchases) by the public health authority to respond to the public health emergency, or increase the health threat to the population." *See Sedfrey M. Linsangan v. Government of Guam, Linda DeNorcey, Lourdes Leon Guerrero (Acting in their Official Capacity),* SP0050-20, at 11 (Super. Ct. Guam Apr. 20, 2020) ("The Governor's emergency powers allow her to suspend the regulations of any government of Guam agency 'to the extent that strict compliance with the same would prevent, hinder or delay necessary action....'" *citing* 10 G.C.A. § 19403); *see also* Legal Memorandum, Staff Attorney to Chief Justice and Chairman of

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the Judicial Council (Mar. 26, 2020) as included in Judicial Council Meeting Packet for April 16, 2020 meeting and submitted to the Legislature on May 5, 2020 (recognizing Governor's authority to suspend certain provisions of Open Government Law during a public health emergency).

By March 16, 2020, Guam had confirmed three (3) COVID-19 positive cases. I issued Executive Order No. 2020-04, which restricted entry into Guam pursuant to 10 G.C.A. § 3333. This restriction was prompted by a determination made by the Department of Public Health and Social Services (DPHSS) that a significant number of our confirmed positives were linked to travel from the Philippines, which saw a twenty-fold increase in its number of COVID-19 positive cases in the ten (10) day period between March 9 and March 19, 2020. *See In re Travelers from Manila, Philippines on or about March 19, 2020 and Travelers from Manila, Philippines on or about March 20, 2020,* SP0049-20, at 2 (Super. Ct. Guam Apr. 1, 2020). Under her authority pursuant to 10 G.C.A. § 10108 and with my approval, the director of DPHSS, who functions as the public health authority during this emergency period, "enacted a mandatory quarantine at a government facility for all persons arriving on Guam who had traveled from the Philippines." *Id.*, at 4. Among the factors that were considered was the lack of resources necessary to monitor all potentially COVID-19 infected travelers. *Id.*, at 5.

Even under the best circumstances, typical procurement is time-consuming and it was readily apparent that the emergent conditions made it impractical -- and sometimes impossible -- to utilize the normal process for acquiring goods and services. We recognized the immediate need to secure quarantine facilities and I instructed that efforts be made to secure the same. We required facilities sufficient to house what we anticipated may be at least two hundred (200) travelers. Additionally, we required necessary support services for such facilities, including food services, laundry services, and healthcare services.

Pursuant to my instruction and in support of the work that all government of Guam agencies are performing to respond to the COVID-19 outbreak on Guam, agreements were made with several service providers. All of these services have been secured pursuant to the authority to make emergency purchases set forth in 10 G.C.A. § 19403.

The federal government, through the Coronavirus Aid, Relief, and Economic Security (CARES) Act, has directed money to Guam to assist us in our COVID-19 response and recovery efforts. These funds must be used by the Executive Branch for specific, if broadly stated, purposes. Oversight of the use of such funds is given to the federal Inspector General. *See* H.R. 748, the CARES Act, https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf at 223-24. The funds are within the exclusive management of the Executive Branch. *See Wong v. Camina*, 2 Guam 134, 134, (Dist. Ct. Guam Jan. 24, 1978) (writing that "all grants and appropriations made by the United States to the government of Guam where the grant or appropriation provides one hundred percent (100%) of the funding for a specific project or purpose and which grant or appropriation makes no provision for local legislative control.")

Services have been, and continue to be, provided to the government of Guam and are appropriate expenditures under the April 22, 2020 Coronavirus Relief Fund Guidance for State, Territorial, Local, and Tribal Governments issued by the United States Department of Treasury, which specifically allows that eligible expenditures include "public health expenses such as…[e]xpenses for quarantining individuals." Additionally, the Guidance provides a non-exclusive list of eligible expenditures, including: establishing temporary medical facilities, emergency medical response expenses, and costs for food delivery, among others.

I, therefore, instruct compensation contemplated in the attached agreements and invoices shall be paid, subject to any necessary reconciliation. Where services continue to be provided, I instruct that future invoices be paid in accordance with any applicable terms and conditions of such agreements.

In accordance with Executive Order No. 2020-13, all agreements and invoices involving the services covered by this memorandum shall be posted on the website of the Office of the Governor. A copy of this memorandum shall also be posted. These expenditures shall be subject to review and shall be included in monthly reporting to the Legislature.

Si Yu'os Ma'åse'.

SO ORDERED:

LOURDES A. LEON GUERRERO
Maga'hågan Guåhan
Governor of Guam

cc via email: *Sigundo Maga'låhen Guåhan*
Linda DeNorcey, Director, Department of Public Health & Social Services
Charles Esteves, Administrator, Guam Homeland Security/Office of Civil Defense

AGREEMENT BETWEEN GUAM HOMELAND SECURITY/OFFICE OF CIVIL DEFENSE AND BRIDGE AINA LE'A, LLC. DBA PERLAS COURTE CONDOMINIUMS

THIS AGREEMENT is entered into by and between Guam Homeland Security/Office of Civil Defense ("GHS/OCD"), an agency of the government of Guam, and Bridge Aina Le'a, LLC. DBA Perlas Courte Condominiums ("Hotel"), whose address is 743 Chalan San Antonio, Tamuning, Guam 96913.

WHEREAS, on March 14, 2020, Governor Lourdes Leon Guerrero issued Executive Order No. 2020-03, which declared a state of emergency relative to the COVID-19 pandemic;

WHEREAS, as part of its response, the government of Guam, with the Department of Public Health and Social Services ("DPHSS") leading these efforts, is implementing screening, quarantine and isolation procedures pursuant to 10 G.C.A. § 3309, in accordance with Chapter 10, Division 1, of Title 26, Guam Administrative Rules;

WHEREAS, pursuant to such quarantine and isolation procedures, it is necessary to provide quarantine quarters for medical personnel who do not have personal living quarters suitable for quarantine from their household; and

WHEREAS, Hotel is uniquely qualified to provide such a facility for purposes of ensuring that such medical personnel can properly protect themselves, their patients and the general public from potential exposure of COVID-19.

WITNESSETH, in consideration of the mutual covenants hereinafter set forth, the Parties agree as follows:

I. Statement of Leased Premises and Services to be Performed.

A. This Agreement ensures Hotel will lease seventeen (17) fully furnished condominiums to GHS/OCD for the entire term of this Agreement and any renewals or extensions thereof.

B. Hotel agrees to provide basic housekeeping for all areas of the facility C.

Hotel agrees to maintain and promptly address any concerns arising

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the physical facility, including but not limited to, air conditioning units, plumbing issues, and furniture.

D. Hotel shall furnish at its own expense, all proper and adequate equipment, materials, labor, personnel, and supplies necessary to provide the Leased

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Premises and perform the Services in a safe, professional, workmanlike and diligent manner, and shall provide and have available at all times for use by its employees engaged in the performance of such services all safety equipment and appliances needed for maximum protection of its employees and other persons against injuries.

II. Term of Agreement.

A. Effective Date. This Agreement shall be effective starting March 19, 2020. GHS/OCD shall not be responsible for any services prior to that date, and HOTEL warrants that no services shall be performed under this Agreement prior to the effective date.

B. Initial Term. The Initial Term of this Agreement shall begin immediately on the effective date and shall end on May 18, 2020.

C. Renewal Terms. At the option of GHS/OCD, and as agreed to by the Hotel, this Agreement may be renewed for ten (10) additional one month (1) periods, subject to wage and benefit compliance and the appropriation, allocation and availability of funds (each being a "Renewal Term"). Upon expiration of the Renewal Term, this Agreement shall expire, unless sooner terminated.

D. Decontamination Period. Upon expiration of the Initial Term or any subsequent renewal term (whichever is later), GHS/OCD shall be allowed a decontamination period to last fifteen (15) days, at no cost to GHS/OCD, for the sole purpose of cleaning the facility per CDC guidelines.

III. Compensation.

A. Compensation. Compensation for Services: Hotel shall receive compensation based on the following formula: ONE HUNDRED AND NO/100 DOLLARS ($100.00) PER FULLY FURNISHED ROOM PER DAY, regardless of occupancy.

B. Contract Type. This is a Firm Fixed-Price Lease and Related Services Contract. The compensation/price stated herein is not subject to adjustment or increase because of variations in the Hotel's actual cost of performing the work and Services specified in this Agreement. Any price adjustments to this Agreement may only be made in accordance with valid, approved Change Orders pursuant to the Change Orders Clause of this Agreement and the Price Adjustment Clause of this Agreement.

C. No Compensation Prior to Approval of Agreement. GHS/OCD shall not be liable to Hotel for any services performed by Hotel prior to full execution of this Agreement by all parties, and Hotel expressly waives any and all

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claims for services performed in expectation of this Agreement prior to its full execution.

D. Final Payment. Final payment shall be made upon satisfactory performance of all services required to be performed by Hotel under this Agreement. Prior to the final payment due Hotel, and as a condition precedent thereto, Hotel shall execute and deliver to GHS/OCD a release in form approved by GHS/OCD of claims against GHS/OCD arising under this Agreement. Hotel expressly waives the provision of Section 82602 of Title 18, Guam Code Annotated, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

E. Payment. All rates and prices and payments to the Hotel shall be in the currency of the United States.

IV. Availability of Funds. This Agreement is contingent upon the availability of governmental funds. Funds are available for the first fiscal period of this Agreement. The initial source of the funds for this Agreement is local funds. The government of Guam and GHS/OCD shall have no liability under this Agreement to the Hotel or to anyone else beyond the certified funds available for this Agreement.

V. Price Adjustment Clause

A. **Price Adjustment Methods**. Any adjustment in contract price pursuant to clauses in this Agreement 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 Offer, Agreement, or subsequently agreed upon;
3. by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the Agreement or subsequently agreed upon;
4. in such other manner as the parties may mutually agree; or
5. in the absence of an agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 GCA (Legal and Contractual Remedies) of the Guam Procurement Law.

B. **Submission of Cost or Pricing Data**. The Hotel shall submit cost or pricing data for any price adjustments subject to the provision of Section 3118 (Cost or Pricing Data) of the Guam

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Procurement Regulations. GHS/OCD may require the Hotel to provide invoices, paid bills, or any other proof it deems appropriate to determine compliance with this provision.

VI. Changes

A. **Change Order.** The Procurement Officer, at any time, and without notice to the sureties, in a signed writing designated or indicated to be a change order, may order:

(1) changes in the services within the scope of the Agreement; and
(2) changes in the time for performance of the Agreement that do not alter the scope of the Agreement.

All contract change orders must be approved in writing by the GHS/OCD on a form approved by GHS/OCD to record change orders.

B. **Adjustments of Price or Time for Performance.** GHS/OCD reserves the right to increase or decrease any unit priced quantity as may be deemed reasonable or necessary in order to complete the Services contemplated under this Agreement. If any such change order increases or decreases the Hotel's cost of, or the time required for, performance of any part of the services under this Agreement, whether or not changed by the order, an adjustment shall be made and the Agreement modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Standard Price Adjustment Clause of this Agreement. Failure of the parties to agree to an adjustment shall not excuse a Hotel from proceeding with the Agreement as changed, provided that the government of Guam promptly and duly make such provisional adjustments in payments or time for performance as may be reasonable. By proceeding with the services, the Hotel shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion. All changes must be recorded on a contract change order before they can be included in an application for payment/invoice.

C. **Written Certification.** The Hotel shall not perform any change order in excess of $5,000 unless it bears, or the Hotel has separately received, a written certification, signed by the Procurement Officer/CEO or other responsible official that funds are available therefor; and, if acting in good faith, the Hotel may rely upon the validity of such certification.

D. **Time Period for Claim.** Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the Hotel shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Hotel's claim unless the government of Guam is prejudiced by the delay in notification.

E. **Claim Barred After Final Payment.** No claim by the Hotel for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Agreement.

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F. **Claims Not Barred.** In the absence of such a change order, nothing in this clause shall restrict the Hotel's right to pursue a claim arising under the Agreement, if pursued in accordance with the clause entitled Claims Based Upon GHS/OCD's Actions or Omissions or for breach of contract.

VII. Subcontractors

A. **Subcontractor.** A subcontractor is a person or entity who has a direct contract with the Hotel or a higher tier subcontractor to perform a portion of the Services set forth in this Agreement.

B. **Award of Subcontracts and Other Contracts for Portions of the Services.**

1. Unless otherwise stated in this Agreement, the Hotel, as soon as practicable after execution of this Agreement, shall furnish in writing to GHS/OCD the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Services. GHS/OCD may reply within 14 days to the Hotel in writing stating: (1) whether GHS/OCD has reasonable objection to any such proposed person or entity; or (2) that GHS/OCD requires additional time for review. Failure of GHS/OCD to reply within the 14-day period shall constitute notice of no reasonable objection.

2. The Hotel shall not contract with a proposed person or entity to whom GHS/OCD has made reasonable and timely objection. The Hotel shall not be required to contract with anyone to whom the Hotel has made reasonable objection.

3. The Hotel shall not substitute a subcontractor, person or entity previously selected if GHS/OCD makes reasonable objection to such substitution.

C. **Subcontractor Relations.** By appropriate written agreement the Hotel shall require each subcontractor, to the extent of the Services to be performed by the subcontractor, to be bound to the Hotel by terms of this Agreement, and to assume toward the Hotel all the obligations and responsibilities, including the responsibility for safety of the subcontractor's Services, which the Hotel, by these Documents, assumes toward GHS/OCD . Each subcontract agreement shall preserve and protect the rights of GHS/OCD under this Agreement with respect to the Services to be performed by the subcontractor so that subcontracting thereof will not prejudice such rights. Hotel shall have full responsibility under this Agreement, the Offer Documents, conditions, Plans, and Specifications for any subcontracts which the Hotel may let.

D. **Subcontracts.** The Hotel or subcontractor shall insert in any subcontracts the clauses set forth in this Agreement, to include a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Hotel shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

VIII. Suspension of Services.

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A. **Suspension for Convenience.** The Procurement Officer may order the Hotel in writing to suspend, delay, or interrupt all or any part of the services for such period of time as may be appropriate for the convenience of GHS/OCD .

B. **Adjustment of Cost.** If the performance of all or any part of the services is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of the Procurement Officer in the administration of this Agreement, or by the failure of the Procurement Officer to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and the Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent: (a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Hotel; or (b) for which an adjustment is provided for or excluded under any other provision of this Agreement.

C. **Time Restriction on Claim.** No claim under this clause shall be allowed: (a) for any costs incurred more than twenty (20) days before the Hotel shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and (b) Unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the Agreement.

D. **Adjustments of Price**. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Agreement.

IX. Early Termination.

A. By GHS/OCD. GHS/OCD reserves the right to cancel or terminate this Agreement prior to its completion for any reason, including, but not limited to, the following:

(i) Termination without Cause: GHS/OCD may terminate this Agreement, without cause, upon the delivery of written notice to the Hotel at least thirty (30) days prior to the intended date of termination.

(ii) Termination in the Best Interest of the Government of Guam: GHS/OCD may terminate this Agreement based upon a determination that such termination is in the best interests of the Government of Guam by delivering a written notice of such termination to the Hotel and the effective date of such termination. Circumstances for termination under this clause include but are not limited to Hotel's successful completion of services under this Agreement to the satisfaction of GHS/OCD.

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(iii) Termination for Cause/Default: If the Hotel 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 Procurement Officer may notify the Hotel in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Hotel'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 Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Hotel 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.

(iv) Termination for Convenience. The GHS/OCD procurement officer may, when the interests of GHS/OCD so require, terminate this contract in whole or in part, for the convenience of GHS/OCD. The procurement officer shall give written notice of the termination to the Hotel specifying the part of the contract terminated and when termination becomes effective. The Hotel shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Hotel will stop work to the extent specified. The Hotel shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Hotel shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The procurement officer may direct the Hotel to assign the Hotel's right, title, and interest under terminated orders or subcontracts to GHS/OCD. The Hotel must still complete the work not terminated by the notice of termination and may incur obligations as necessary to do so.

The Hotel shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR §3118. If the Hotel fails to file a termination claim within one year from the effective date of termination, the procurement officer may pay the Hotel, if at all, an amount set in accordance with this section. The procurement officer and the Hotel may agree to a settlement provided the Hotel has filed a termination claim as required herein and the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GHS/OCD and the contract price of the work not terminated. Absent agreement of a settlement, the procurement officer shall pay the Hotel the following amounts: with respect to all contract work performed prior to the effective date of the termination, the total, without duplication of any items, of: (a) the cost of such work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amount paid or to be paid for completed portions

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of such work; provided that if it appears that the Hotel 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; (b) cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to this clause. These costs must not include costs paid in accordance with subsection (a) above; (c) the reasonable settlement costs of the Hotel 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 and settlement of subcontracts thereunder. The total sum to be paid the Hotel under this subsection shall not exceed the total contract price plus the reasonable settlement costs of the Hotel reduced by the amount of payments otherwise made, the proceeds of any sales of supplies or materials under this section, and the contract price of work not terminated.

B. By Hotel.

(i) Termination for Cause: Hotel shall notify GHS/OCD in writing of deficiencies or default in the performance of GHS/OCD's duties under this Agreement. GHS/OCD shall have twenty (20) days to correct the deficiency or cure the default, which period may be extended by Hotel (said extension not to be unreasonably denied). Upon 60 days' written notice of Hotel's termination of this Agreement for cause, the Hotel shall be entitled to payment, in accordance with Section III of this Agreement, for satisfactory services rendered up to the termination date and GHS/OCD shall have no obligations to Hotel. The Hotel shall be obligated to continue performance of services, in accordance with this Agreement, until the termination date and shall have no further obligation to perform services after the termination date.

C. Termination/Modification for Lack of Funds. GHS/OCD may terminate or modify this Agreement based upon a lack of funding. In such an event, GHS/OCD shall promptly provide notice to Hotel and within twenty (20) days of the notice, the Parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to Section IV of this Agreement as applicable.

D. Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from GHS/OCD, the Hotel shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Hotel in which GHS/OCD has an interest.

E. Additional Provisions. In the event that either party effects an Early Termination, it is expressly provided that GHS/OCD may issue a new solicitation with respect to such terminated services. This provision shall not be deemed an admission or waiver of any rights and defense with respect to rights of either Party under this Agreement, including but not limited to, either Parties' rights to assert damages for breach of Agreement.

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X. **Contact Person.** The Hotel agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible to the questions and direction of GHS/OCD. The contact person must be identified in writing within thirty (30) days after full execution of this Agreement by all parties. GHS/OCD reserves the right to request replacement of the contact person designated by the Hotel under this Agreement.

XI. Confidentiality.

A. Information. The Hotel hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, electronic or digital media or otherwise (collectively, the "Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by the Hotel to safeguard the confidentiality of the Information in conformance with any applicable United States and Guam laws, statutes and regulations.

The Hotel shall keep copies of the Information and the provisions of this Section shall remain in effect as long as determined by GHS/OCD. All of the Information shall be returned promptly after use to GHS/OCD and all copies or derivations of the Information shall be physically and/or electronically destroyed. Hotel shall include a letter attesting to the complete return of Information and documenting the destruction of copies and derivations with the returned Information.

The Hotel shall not enter into any Agreements or discussions with a third party concerning such Information without the prior written consent of GHS/OCD, and then only if the Hotel requires the third party(ies) to agree to the terms of the confidentiality set forth herein and the Information is provided to such third party(ies) only for purposes of enabling the Hotel to discharge its responsibilities under this Agreement.

It is specifically provided that the limitations contained in this paragraph A shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order, issued by a court of competent jurisdiction.

B. Liability. Failure to comply with the provisions of Paragraph A shall subject the Hotel to liability, including all damages and injunctive relief.

XII. Claims Based Upon GHS/OCD's Actions or Omissions

A. **Notice of Claim**. If any action or omission on the part of GHS/OCD or any entity within the government of Guam, requiring performance changes within the scope of the Agreement constitutes the basis for a claim by Hotel for additional compensation, damages, or an extension

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of time for completion, Hotel shall continue with performance of the Agreement in compliance with the directions or orders of GHS/OCD, but by so doing, Hotel shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

1. Hotel shall have given written notice to GHS/OCD:

a) prior to the commencement of the work involved, if at that time, Hotel knows of the occurrence of such action or omission;
b) within 30 days after Hotel knows of the occurrence of such action or omission, if Hotel did not have such knowledge prior to the commencement of the work; or
c) within such further time as may be allowed by the GHS/OCD in writing.

This notice shall state that Hotel regards the act or omission as a reason which may entitle Hotel to additional compensation, damages, or an extension of time. The GHS/OCD, 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 GHS/OCD.

2. The notice required by Subparagraph (A) of this Paragraph describes as clearly as practicable at the time the reasons why Hotel believes that additional compensation, damages, or an extension of time may be remedies to which Hotel is entitled; and

3. Hotel maintains and, upon request, makes available to the GHS/OCD within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

B. **Limitations of Clause**. Nothing herein contained, however, shall excuse Hotel from compliance with any rules of law precluding any government of Guam officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Agreement..

XIII. Waiver. No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

XIV. Severability. If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in the Agreement.

XV. Survival of Warranties. All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

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XVI. Fees and Expenses. Each of the Parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

XVII. Notices. All invoices, reports, correspondence, notices, requests, demands and other communications here under shall be in the English Language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth day after mailing, whichever occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this section:

TO GHS/OCD: GUAM HOMELAND SECURITY/OFFICE OF CIVIL DEFENSE

_____

_____

TO HOTEL: **BRIDGE AINA LE'A, LLC**
743 CHALAN SAN ANTONIO TAMUNING, GU 96913

XVIII. Transmission of Data in Digital Form. If the parties intend to transmit any information or documentation in digital form, they shall establish necessary protocols governing such transmissions, unless otherwise already provided in this Agreement.

XIX. Assignment/Subcontractors. It is expressly acknowledged that Hotel is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Hotel utilizes one or more subcontractors for such purpose. The right and interest of Hotel under this Agreement (including, but not limited to, Hotel's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, Hotel, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of GHS/OCD. In the event of a permissive subcontract or assignment of this Agreement by Hotel, Hotel agrees that any subcontractors retained by Hotel or assignees shall be subject to all provisions of this Agreement.

XX. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

XXI. Scope of Agreement. This Agreement (i) supersedes any and all other Agreements, either oral or in writing, between the Parties hereto with respect to the subject matter hereof, and (ii) contain all of the covenants and Agreements between the Parties with respect to such subject matter in any manner whatsoever. The Hotel and GHS/OCD each acknowledge that

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no representations, inducements, promises or agreement, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding.

XXII. Captions. All Section and paragraph titles or captions contained in this Agreement are for convenience only and shall not be deemed part of the content of the Agreement.

XXIII. Counterparts. This Agreement may be executed in counterparts, all of which taken together shall be deemed one original.

XXIV. Governing Law and Forum Selection. Except to the extent United States federal law is applicable, the validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam. Hotel expressly recognizes that the Government Claims Act (Title 5 of the Guam Code Annotated, Chapter 6) applies with respect only to claims of money owed by or to the Hotel/Hotel against the Government, if the claim arises out of or in connection with this Agreement. Hotel also expressly recognizes that all other claims by the Hotel/Hotel against the Government are subject to the Guam Procurement Law (Title 5 of the Guam Code Annotated, Chapter 5).

XXV. Consent to Jurisdiction. Hotel hereby expressly consents to the jurisdiction and venue of Guam with respect to any protest or dispute resolution, and the forum of the courts of Guam with respect to any and all claims which may arise by reason of this Agreement, except as otherwise may be provided by Guam Procurement Law. Hotel waives any and all rights it may otherwise have to contest the same or to proceed with any claims arising by reason of this Agreement in a different jurisdiction, forum, or venue.

XXVI. Compliance with Laws.

A. In General. The Hotel shall comply with all U.S. and Guam laws, statutes, regulations and ordinances applicable to this Agreement. The Hotel represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

B. Non-Discrimination in Employment. The Hotel agrees: (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap; (ii) to include a provision similar to that contained in subsection (i) above in any subcontract or assignment agreement except a subcontract for standard commercial supplies or raw materials; and (iii) to post and to cause subcontractors and/or assignees to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause.

XXVII. Retention and Access to Records and Audit Review.

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The GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives must have the right of access to any documents, papers, or other records of the Hotel which are pertinent to the contract, in order to make audits, examinations, excerpts, and transcripts, and to inspect supplies and services and audit records at any Hotel or proposed subcontractor's facility or place of business and perform tests both: prior to award of a contract, to determine responsibility and capability of performing any contract to be awarded under a solicitation, and to determine whether the Hotel's or subcontractor's facilities, supplies, or services conform to solicitation requirements; or after award, to determine whether the awarded contractor is conforming to contract requirements, and its performance is therefore acceptable. This right also includes timely and reasonable access to the Hotel's personnel for the purpose of interview and discussion related to such documents. The Hotel agrees to abide by the following access, audit, and inspection terms:

A. Access to Records and Retention. The Hotel, including its subcontractors, if any, agrees that it shall maintain and retain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and relative to its cost or pricing data, and shall make such materials available at all reasonable times after submission of its Offer, during any awarded contract term, and for three (3) years from the date of final payment under any awarded contract or for three (3) years from the date that all other pending matters are closed, whichever is later, for inspection in Guam or at any reasonable location designated by the GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives, unless the Offeror is notified in writing by the Federal Emergency Management Agency, the cognizant agency for audit, the oversight agency for audit, the cognizant agency for indirect costs, or the GHS/OCD to extend the retention period. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. Records for real property and equipment acquired with the funds from the awarded contract must be retained for three (3) years after final disposition of the real property and equipment. Each subcontract by the Offeror shall include a provision containing the conditions of this Section for any contract awarded under this solicitation.

B. Right to Audit. Hotel shall establish and maintain a reasonable accounting system that enables the GHS/OCD or the Federal Emergency Management Agency to readily identify Offeror's assets, expenses, costs of goods, and use of funds. The GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives shall have the right to audit, to examine, and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to its Offer, the solicitation, or this Agreement, which are kept by or under the control of the Hotel, including, but not limited to those kept by the Hotel, its employees, agents, assigns, successors, and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files (including bids of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back-charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. Hotel shall, at all times during the term of any awarded contract and for a period

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of three (3) years after the date of final payment under any awarded contract, maintain such records, together with such supporting or underlying documents and materials. The Hotel shall at any time requested by GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives before, during, or after completion of an awarded contract, and at Hotel's own expense make such records available for inspection and audit (including copies and extracts of records as required) by GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives Such records shall be made available to GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives, during normal business hours at the Hotel's office or place of business without prior notice. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives. Hotel shall ensure GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives has these rights with Hotel's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Hotel and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Hotel's obligations to GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives. Costs of any audits conducted under the authority of this right to audit and not addressed elsewhere will be borne by GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives unless certain exemption criteria are met. If the audit identifies overpricing or overcharges (of any nature) by the Hotel to GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives in excess of one-half of one percent (.5%) of the total contract billings, the Hotel shall reimburse the GHS/OCD or the entity that conducted the audit for the total costs of the audit. If the audit discovers substantive findings related to fraud, misrepresentation, or nonperformance, the GHS/OCD may recoup the costs of the audit work from the Hotel. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Hotel's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GHS/OCD the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives' findings to Hotel.

C. Right to Enter and Inspect. GHS/OCD the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives may, at any time, without notice, enter and inspect the Hotel's or subcontractor's facilities, place(s) of business, or any place(s) of performance of this Agreement. The GHS/OCD, the Federal Emergency Management Agency, Inspectors General, the Comptroller General of the United States, and any of their authorized representatives may enter and inspect any plans, supplies, services, equipment, work and records at these locations which are related to the performance of this Agreement, and may conduct any testing deemed necessary to determine whether the Hotel's or subcontractor's compliance or conformity to the solicitation or contract requirements. Guam may enter and audit the cost or pricing data, books, and records of the Hotel

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or any subcontractor, and/or investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to § 9102 (Authority to Debar or Suspend) of the Guam Procurement Rules and Regulations.

XXVIII. Program Fraud and False or Fraudulent Statements or Related Acts. Hotel stipulates that Title 5 GCA Chapter 37, the False Claims and Whistleblower Act applies to this Agreement and to all Hotel's actions pertaining to this Agreement. The False Claims and Whistleblower Act was passed as Public Law 34-116, Chapter III, Section 20 (lapsed into law August 24, 2018) and codified at Title 5 GCA Chapter 37.

XXIX. Government of Guam and GHS/OCD Not Liable.

A. General Liability. GHS/OCD and the government of Guam assume no liability for any accident or injury that may occur to Hotel, its agents, dependents, or personal property while in execution of duties under this Agreement.

B. Prior Work. GHS/OCD and the government of Guam shall not be liable to Hotel for any services performed by Hotel prior to the approval of this Agreement by the Procurement Officer and the Hotel hereby expressly waives any and all claims for compensation for acts performed in expectation of this Agreement prior to its approval by the Governor of Guam.

C. GHS/OCD not Liable. GHS/OCD assumes no liability for any accident, loss, claim, judgment, action or injury that may occur to the Hotel and/or the Hotel's Partner's, officers, directors, agents, servants, subcontractors and/or employees, and/or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused or contributed to by the negligent act or omission of GHS/OCD. No officer, agent, or employee of GHS/OCD shall be liable personally under or by reason of this Agreement or any of its provisions. In addition, GHS/OCD assumes no liability for any accident or injury that may occur to Hotel's officers, directors, employees, agents, or dependents while traveling to and from Guam in furtherance of this Agreement.

XXX. Delays, Extensions and Suspensions. GHS/OCD unilaterally may order the Hotel in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of GHS/OCD. The Hotel agrees to prosecute the work continuously and diligently apart from those periods of suspension, delay or interruption. Except as otherwise agreed to by the Parties, reasonable time extensions for the performance of Hotel's services will be granted only for excusable delays that arise from causes beyond the control and without the fault or negligence of the Hotel, including, but not restricted to, acts of God, acts of the public enemy, acts of the Government of Guam or the Government of the United States in either its sovereign or contractual capacity, acts of another Hotel or contractor in the performance of an agreement with the Government of Guam, fires, floods, typhoons, earthquakes, epidemics, quarantine restrictions, strikes, freight, or embargoes.

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XXXI. Modifications including those Due to Public Welfare, Change in Law or Change in Marketing Conditions. GHS/OCD shall have the unilateral power to modify the Agreement at any time subject to the written agreement of Hotel. GHS/OCD shall have the power to make changes in the Agreement and to impose new rules and regulations on the Hotel under the Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. GHS/OCD shall give the Hotel notice of any proposed change in the Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Hotel. In the event GHS/OCD materially alters the obligations of the Hotel, or the benefits to GHS/OCD, then the Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Hotel, then the Hotel or GHS/OCD shall be entitled to an adjustment in the rates and charges established under the Agreement. Hotel shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in the Agreement shall require any party to perform any act or function contrary to law. GHS/OCD and the Hotel agree to enter into good faith negotiations regarding modifications to the Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to the Agreement, GHS/OCD and the Hotel shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of the Hotel directly and demonstrably due to any modification in the Agreement under this clause.

XXXII. Nonsegregated Facilities. The Hotel must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The Hotel may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The Hotel's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the Hotel's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The Hotel shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

XXXIII. Hotel Employee Benefits, Taxes, and Insurance. Hotel agrees there shall be no government of Guam employee benefits accruing to Hotel under this Agreement, including, but not limited to:

a) Insurance coverage provided by the GHS/OCD;
b) Participation in the government of Guam retirement system
c) Accumulation of vacation leave or sick leave; and
d) Workers Compensation coverage.

A. Status of Hotel. The Hotel and its officers, agents, servants, subcontractors and employees are independent contractors performing Services for GHS/OCD and are not employees of either GHS/OCD or the government of Guam. The Hotel and

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its officers, agents, servants and employees shall not accrue vacation or sick leave, participate in the government of Guam retirement system, insurance coverage, bonding, use of government vehicles or any other benefits accorded to government of Guam employees as a result of this Agreement. Hotel agrees that Hotel and its aforementioned employees, officers, directors, agents, servants, and subcontractors are not and will not become an employee, officer or Board member of GHS/OCD at any time during the duration of this Agreement, and will otherwise comply with the provisions of the Guam Procurement Law regarding ethics in public contracting (Title 5 Guam Code Annotated, Chapter 5, Article 11, and its associated rules and regulations). Nothing in this Agreement or any action taken under this Agreement shall be deemed or construed in any manner or for any purpose to evidence or establish as between Hotel and GHS/OCD a relationship of partnership, agency, association, joint venture or representative, nor does this Agreement authorize any party to undertake or bind any obligation or responsibility on behalf of the other party. In addition, there shall be no withholding of taxes by GHS/OCD for the Hotel.

B. Tax and Withholding Liability. The Hotel assumes responsibility for its personnel and subcontractors providing services hereunder and will make all deductions and payments for social security and withholding taxes and for contributions to employment compensation funds, employee benefits, or any other payments required by the governments of the United States and Guam, if required. Hotel is responsible for paying when due any and all income taxes, gross receipts taxes or business privilege taxes, or any other taxes or assessments incurred as a result of the services performed by the Hotel and Hotel's employees or agents under this Agreement or the compensation paid to Hotel for services performed under this Agreement, unless Hotel is a non-resident person or entity without a valid Guam Business License, in which case a withholding fee equal to four percent (4%) of the total dollar value of this Agreement will be withheld for the payment of Guam's Business Privilege Tax in accordance with 11 GCA § 71114 (PL 33-166).

C. Insurance. Hotel shall maintain at the Hotel's expense all necessary insurance for its employees including but not limited to Workman's Compensation, Errors and Omissions, and liability insurance for each employee as required under U.S. and Guam Law and the mandates of the underlying RFP to this Agreement. Hotel agrees to hold harmless and indemnify GHS/OCD, its officers, directors, employees, agents, representatives, successors and assigns, for any and all claims, demands, costs, losses, fees, penalties, interest, or damages, including attorney's fees, which may be brought or asserted due to: (i) any injury, death, or property damage arising from the negligence or other wrongful or tortuous acts of Hotel or Hotel's employees, officers, contractors, directors, agents, representatives, successors, or assigns; or (ii) Hotel's failure to comply with terms of this subparagraph B.

D. Wage and Benefits Compliance. Hotel warrants it shall comply with all applicable federal and local laws, rules, and regulations regarding the payment of minimum wages and benefits, in particular in accordance with the Wage Determination for Guam issued and promulgated by the U.S. Department of Labor

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and with Guam Public Law 26-111. Hotel guarantees health and similar benefits for its employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor, as required by any applicable law. Hotel further guarantees a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law. Hotel assumes all liability for, and hereby indemnifies BSP GCMP from, any violation of any applicable law, rule, or regulation relating to the payment of wages or benefits. In addition, this Agreement contains extension and/or renewal clauses. Therefore, at the time of any extension or renewal adjustments, there shall be a stipulation contained in the extension or renewal document stating that the Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the extension or renewal date shall apply, as required by any applicable law. Any renewal or extension to which this provision applies shall also contain provisions mandating health and similar benefits for employees, such benefits having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor and shall contain provisions guaranteeing a minimum of ten (10) paid holidays per annum per employee, as required by any applicable law.

XXXIV. Equal Employment Opportunity Compliance. The Hotel and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633. The Hotel and all subcontractors must also comply with the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b).

A. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 16251627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Hotel's project activities under this Agreement. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this Agreement. In the execution of this Agreement, the Hotel agrees to comply with the following minimum specific requirement activities of EEO:

1. The Hotel will work with GHS/OCD and the Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the Agreement.

2. The Hotel will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment

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or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

B. EEO Officer: The Hotel will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

C. Dissemination of Policy: All members of the Hotel's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Hotel's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

1. Periodic meetings of supervisory and personnel office employees will be conducted before the start of services and then periodically, at which times the Hotel's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

2. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Hotel's EEO obligations within thirty days following their reporting for duty with the Hotel.

3. All personnel who are engaged in direct recruitment for the Project will be instructed by the EEO Officer in the Hotel's procedures for locating and hiring minorities and women.

4. Notices and posters setting forth the Hotel's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

5. The Hotel's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

D. Recruitment: When advertising for employees, the Hotel will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project workforce would normally be derived.

1. The Hotel will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the Hotel will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the Hotel for employment consideration.

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2. In the event the Hotel has a valid bargaining agreement providing for exclusive hiring hall referrals, the Hotel is expected to observe the provisions of that agreement to the extent that the system meets the Hotel's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the Hotel to do the same, such implementation violates Federal nondiscrimination provisions.

3. The Hotel will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

E. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

1. The Hotel will conduct periodic inspections of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project personnel.

2. The Hotel will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

3. The Hotel will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Hotel will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

4. The Hotel will promptly investigate all complaints of alleged discrimination made to the Hotel in connection with its obligations under this Agreement, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Hotel will inform every complainant of all of their avenues of appeal.

F. Training and Promotion:

1. The Hotel will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

2. Consistent with the Hotel's workforce requirements and as permissible under Federal and State regulations, the Hotel shall make full use of training programs, i.e.,

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apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this Agreement, this subparagraph will be superseded as indicated in the special provision. GHS/OCD may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

3. The Hotel will advise employees and applicants for employment of available training programs and entrance requirements for each.

4. The Hotel will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

G. Unions: If the Hotel relies in whole or in part upon unions as a source of employees, the Hotel will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the Hotel, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

1. The Hotel will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

2. The Hotel will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

3. The Hotel is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Hotel, the Hotel shall so certify to GHS/OCD and shall set forth what efforts have been made to obtain such information.

4. In the event the union is unable to provide the Hotel with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the Hotel will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the Hotel from the requirements of this paragraph. In the event the union referral practice prevents the Hotel from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, the Hotel shall immediately notify GHS/OCD.

H. Reasonable Accommodation for Applicants/Employees with Disabilities: The Hotel must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established

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thereunder. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

I. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The Hotel shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Hotel shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this Agreement.

1. The Hotel shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this Agreement.

2. The Hotel will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

J. Records and Reports: The Hotel shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the Hotel for all the Services under this Agreement and shall be available at reasonable times and places for inspection by authorized representatives of GHS/OCD.

1. The records kept by the Hotel shall document the following:

a. The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

b. The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

c. The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

2. If required, the Hotel and any subcontractors will submit an annual report to GHS/OCD each July for the duration of the Project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the Services under this Agreement. The staffing data should represent the project workforce on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the Hotel will be required to collect and report training data. The employment data should reflect the workforce on board during all or any part of the last payroll period preceding the end of July.

XXXV. Disclosure. The Hotel hereby represents that it has disclosed to GHS/OCD all matters regarding Hotel which if not disclosed to GHS/OCD would materially affect GHS/OCD's decision to enter into this Agreement with Hotel.

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XXXVI. Mandatory Representations by Hotel:

A. Persons Convicted of Sex Offense. Hotel warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Hotel while on government of Guam property, with the exception of public highways. If any employee of Hotel is providing services on government property and is convicted subsequent to an award of a contract, then Hotel warrants that it will notify GHS/OCD of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If Hotel is found to be in violation of any of the provisions of this paragraph, then GHS/OCD will give notice to Hotel to take corrective action. Hotel shall take corrective action within twenty-four (24) hours of notice from GHS/OCD, and Hotel shall notify GHS/OCD when action has been taken. If Hotel fails to take corrective steps within twenty-four (24) hours of notice from GHS/OCD, then GHS/OCD in its sole discretion may temporarily suspend this agreement.

B. Gratuities and Kickbacks. Hotel warrants it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in 2 GAR Division 4 §11107.

C. Contingent Fees. Hotel warrants it has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies.

D. Ethical Standards. Hotel warrants it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

XXXVII. Hotel's Ethical Warranties.

A. Warranty against Employment of Sex Offenders. Hotel warrants that: (1) no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of Hotel while on government of Guam property, with the exception of public highways; and (2) that if any person providing services on behalf of Hotel is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry at any time during the performance of the contract, that such person will be immediately removed from working on

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government property and Hotel warrants that it will notify the Director of the AGENCY within twenty-four (24) hours of such conviction. If Hotel is found to be in violation of any of the provisions of this paragraph, then GHS/OCD will give notice to Hotel to take corrective action. Hotel shall take corrective action within twenty-four (24) hours of notice from GHS/OCD, and Hotel shall notify GHS/OCD when action has been taken. If Hotel fails to take corrective steps within twenty-four (24) hours of notice from GHS/OCD, then GHS/OCD in its sole discretion may temporarily suspend this agreement.

B. Covenant against Contingent Fees. Hotel represents that it has not retained a person to solicit or secure a government of Guam contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

C. Representation Regarding Gratuities, Kickbacks, and Favors. The Hotel represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities, kickbacks, and favors set forth in the Guam Procurement Law.

D. Ethical Standard. Hotel represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Article 11 of the government of Guam Procurement Regulations.

XXXVIII. Guam Debarment. Hotel warrants that it will comply with the provisions of 5 GCA Chapter 5 Articles 9 and 11, subject to debarment or suspension, and that it will not employ any subcontractors who have been federally debarred or debarred by the government of Guam.

XXXIX. Federal Debarment. Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award of federal funds (see 2 CFR 180.220) must not be made to parties listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549. Hotel warrants that it is not a party listed on the government wide exclusions in the System for Award Management (SAM), and will comply with the provisions of Subpart C of 2 CFR Part 1326, "Nonprocurement Debarment and Suspension," (published in the Federal Register on December 21, 2006, 71 FR 76573) which generally prohibits entities that have been debarred, suspended, or voluntarily excluded from participating in nonprocurement transactions either through primary or lower tier covered transactions, and which

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sets forth the responsibilities of recipients of federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

Hotel agrees to the Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion, Lower Tier Covered Transaction (Sub-Recipient), which is a material representation of fact, and agrees to include the following notice in the awarded contract, sub-award, or subcontract, as applicable:

"Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under $25,000 not requiring the consent of a DOC official) are subject to 2 CFR Part 1326, Subpart C, "Government-wide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a sub-award, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying."

Contractors should familiarize themselves with these provisions, including the certification requirements. Therefore, during contract performance applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying—Lower Tier Covered Transactions," completed without modification.

XL. Procurement of Recovered Materials. This is a federally funded project and pursuant to 2 CFR § 200.322, any Hotel awarded a contract under this RFP and all of its subcontractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, with CFR 121 OMB Guidance § 200.324 where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

XLI. Drug Free Workplace.

Hotel agrees to comply with Title V of the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102); and the implementing regulations published at 2 CFR Part 182, "Government-wide Requirements for Drug-free Workplace (Financial Assistance)"; and the laws and regulations promulgated by the Federal Government and to maintain a drug-free workplace.

A. The Hotel shall, within 30 days after award:

1. Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance as defined and listed in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812), and as further defined by regulation at 21 CFR 1308.11 through 1308.15,] is prohibited in the Hotel's

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workplace and specifying the actions that will be taken against employees for violations of such prohibition;

2. Establish an ongoing drug-free awareness program to inform such employees about – (i) The dangers of drug abuse in the workplace;

   (ii) The Hotel's policy of maintaining a drug-free workplace;

   (iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

   (iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.

3. Provide all employees engaged in performance of the Agreement with a copy of the statement required by paragraph (1) of this clause;

4. Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this Agreement, the employee will:

   (i) Abide by the terms of the statement; and

   (ii) Notify the employer in writing of the employee's conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction.

5. Notify the Procurement Officer in writing within 10 days after receiving notice under subdivision (4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

6. Within 30 days after receiving notice under subdivision (4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

7. Make a good faith effort to maintain a drug-free workplace through implementation of paragraphs (1) through (6) of this clause.

B. The Hotel, if an individual, agrees by award of this Agreement not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this Agreement.

C. In addition to other remedies available to GHS/OCD, the Hotel's failure to comply with the requirements of paragraph (B) or (C) of this clause may render the Hotel subject to suspension of contract payments, termination of the contract for default, and suspension or debarment.

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XLII. Disputes.

A. GHS/OCD and the Hotel agree to attempt resolution of all controversies which arise under, or are by virtue of, this procurement and any resulting contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the Hotel shall request the government in writing to issue a final decision within sixty days after receipt of the written request. If the government does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the Hotel may proceed as though the government had issued a decision adverse to the Hotel.

B. GHS/OCD shall immediately furnish a copy of the decision to the Hotel, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

C. GHS/OCD's decision shall be final and conclusive, unless fraudulent or unless the Hotel appeals the decision.

D. This subsection applies to appeals of GHS/OCD's decision on a dispute. For money owed by or to GHS/OCD under this Agreement, the Hotel shall appeal the decision in accordance with the Government Claims Act by initially filing a claim with the Office of the Attorney General no later than eighteen months after the decision is rendered by GHS/OCD or from the date when a decision should have been rendered. For all other claims by or against GHS/OCD arising under this Agreement, the Office of the Public auditor has jurisdiction over the appeal from the decision of GHS/OCD. Appeals to the Office of the Public Auditor must be made within sixty days of GHS/OCD's decision or from the date the decision should have been made.

E. The Hotel shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

F. The Hotel shall comply with GHS/OCD's decision and proceed diligently with performance of the Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, the Agreement, except where the Hotel claims a material breach of the Agreement by GHS/OCD. However, if GHS/OCD determines in writing that continuation of services under the Agreement is essential to the public's health or safety, then the Hotel shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by GHS/OCD.

XLIII. Indemnification. To the fullest extent permitted by law the Hotel shall indemnify and hold harmless the government of Guam, GHS/OCD, its Contractors and Subcontractors, if any, and the agents and employees of any of them, from and against claims, damages, losses, expenses, actions, recoveries, and judgments of every nature, including but not limited to attorneys' fees, arising out of or resulting from Hotel's

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performance of the Services. Hotel shall indemnify the government of Guam, GHS/OCD, its Project Manager and its Contractors, if any, and the agents and employees of any of them, or any Assignee against, and hold them harmless from, any and all claims, actions, damages, including reasonable attorneys' fees, obligations, liabilities, and liens arising or imposed without the fault or negligence of Hotel, in connection with latent or other defects, or any claim for patent, trademark, copyright, or "trade secret" infringement, or under the doctrine of "strict liability," imposed or incurred by or asserted against the government of Guam, GHS/OCD, its Project Manager, or their respective successors or assigns, arising out of the manufacture, purchase, lease, possession, operation, condition, use or return of the Equipment, or by operation of law. Hotel shall be liable if any claim, damage, loss or expense attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (including the Equipment itself) is caused by the negligent acts or omissions of the Hotel, a subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Hotel's indemnification does not extend to liabilities caused solely by the gross negligence or intentional wrongdoing of the government of Guam. Hotel shall give GHS/OCD prompt written notice of any matter hereby indemnified against and agrees that upon written notice by GHS/OCD of the assertion of such a claim, action, damage, obligation, liability, or lien, Hotel shall assume full responsibility for the defense thereof. The government of Guam shall have an opportunity to participate in the defense at its own expense with respect to attorneys' fees and costs, but not liability; particularly when there are substantial principles of government or public law involved, when litigation might create precedent affecting future governmental operations or liability, or when involvement of the government of Guam is otherwise mandated by law. Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person under this Agreement.

XLIV. Attachments, Exhibits, Schedules, and Entire Agreement. This Agreement, including its Attachments, Exhibits and Schedules, constitutes the entire Agreement and supersedes all prior written or oral understandings. No Agreement, oral or written, expressed or implied, has been made by any party hereto, except as expressly provided herein. All prior Agreements and negotiations are superseded hereby. This Agreement and any duly executed amendments hereto constitute the entire Agreement between the Parties hereto.

XLV. Computation of Time. Whenever this Agreement provides for a time period of ten (10) days or less days, weekends and Government of Guam holidays are not included in the computation. When this Agreement provides for a time period of over ten (10) days, weekends and Government of Guam holidays are to be included in the computation.

XLVI. Partial Invalidity. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue to be in full force and effect.

*** SIGNATURE PAGE TO FOLLOW ***

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OFFICE OF CIVIL DEFENSE

_____ Date:_____

CHARLES ESTEVES
Administrator

BRIDGE AINA LE'A, LLC
DBA PERLAS COURTE CONDOMINIUMS

_____ Date: 5/8/2020

BARTLEY A. JACKSON
~~President~~ Authorized Signatory

CERTIFIED FUNDS AVAILABLE:

_____ Date:_____

MARIE QUENGA
Certifying Officer

Account No.:_____

BUREAU OF BUDGET MANAGEMENT & RESEARCH

_____ Date:_____

EDWARD M. BIRN
Director

APPROVED AS TO FORM & LEGALITY:

OFFICE OF THE ATTORNEY GENERAL OF GUAM

_____

HONORABLE Leevin T. Camacho
Attorney General of Guam

Date:_____

OFFICE OF THE GOVERNOR OF GUAM

_____ Date:_____

HONORABLE Lourdes A. Leon Guerrero
Maga'hågan Guåhan
Governor of Guam