

1 **BROOKS CONCEPCION LAW, P.C.**  
2 247 Martyr Street, Ste. 101  
3 Hagatna, Guam 96910  
4 (671) 472-6848  
5 (671) 477-5790

**RECEIVED**  
OFFICE OF PUBLIC ACCOUNTABILITY  
PROCUREMENT APPEALS  
DATE: Jun 23, 2020  
TIME: 11:20  AM  PM BY: Chris  
FILE NO OPA-PA: 20-005

6 **BEFORE THE OFFICE OF PUBLIC ACCOUNTABILITY**

7 In the Appeal of ) DOCKET NO. OPA-PA-\_\_\_\_\_  
8 )  
9 **BEACH RESORT LLC dba THE** )  
10 **HOTEL SANTE FE GUAM,** ) **NOTICE OF APPEAL**  
11 )  
12 **Appellant** )

12 BEACH RESORT LLC dba The Hotel Santa Fe (“Santa Fe”) hereby appeals the wrongful  
13 termination of its agreement with Guam Homeland Security/Office of Civil Defense by General  
14 Services Agency (“GSA”) related to Purchase Order P206E00310 (the “Contract”). Santa Fe  
15 brings this appeal pursuant to Title 5 of the Guam Code Annotated, §§ 5427 (a) and (e).  
16

17 **I. APPELLANT INFORMATION**

18 Name: BEACH RESORT LLC dba The Hotel Santa Fe  
19 Mailing Address: 132 Lagoon Drive, Tamuning, Guam 96913  
20 Business Address: 132 Lagoon Drive, Tamuning, Guam 96913  
21

22 For this Appeal, please direct all correspondence to Santa Fe’s counsel of record, Georgette  
23 Bello Concepcion, BROOKS CONCEPCION LAW, P.C, 247 Martyr St., Suite 101, Hagåtña, GU  
24 96910, Tel. 472-6848; Fax: 4775790; [gbc@guamlaw.net](mailto:gbc@guamlaw.net).

25 **II. APPEAL INFORMATION**

26 A. Purchasing Agency: Office of the Governor  
27 B. Contract No.: Purchase Order P206E00310 (See **Exhibit A** attached hereto.)  
28

ORIGINAL

1 C. Date of Contract: May 16, 2020

2 D. This appeal arises from the procuring agency's failure to adhere to the terms of the  
3 Contract which resulted in the unlawful cancellation of Purchase Order No. P206E00310. The  
4 procuring agency terminated the purchase order without cause and without first allowing Santa Fe  
5 ten days to cure the alleged list of concerns as required under the terms of the Agreement. Santa Fe  
6 appealed the cancellation of its Contract. The GSA denied said appeal. See letter dated June 10,  
7 2020 attached hereto as **Exhibit B**.

9 E. The Contract was awarded to Core Tech International on May 21, 2020. See  
10 Purchase Order P206E00326 attached hereto as **Exhibit C**.

### 11 III. Relevant Procedural History

12 In May 2020, GSA sent out a Request for Quotation for quarantine facilities the government  
13 of Guam will utilize for 14 day mandatory quarantine for arriving passengers from COVID-19  
14 affected areas. See **Exhibit D** attached hereto. Attached to the Request for Quotation were  
15 "Attachments 1. Specifications 2. Terms and Conditions" and referenced on page 1 of the RFQ. Id.

16 On or about May 15, 2020 Santa Fe provided a Quotation in response to a Request for  
17 Quotation ("RFQ") to serve as a quarantine facility. See Hotel Non-Congregate Shelters attached  
18 hereto as **Exhibit E**.

19 Santa Fe "was selected based upon meeting the standards required to house" passengers  
20 from COVID-19 affected areas. See Exhibit B attached hereto (June 10, 2020 letter from GSA).

21 In a letter dated May 27, 2020, GSA informed Santa Fe that Purchase Order Number  
22 P206E00310 was cancelled retroactively to May 23, 2020. See **Exhibit F** attached hereto (May 27,  
23 2020 letter from GSA to Santa Fe) (hereinafter "Termination Letter). GSA cancelled the purchase  
24 order due to Santa Fe's alleged failure to meet the "terms of the agreement." Id. Emphasis added.  
25 Quarantined passengers did not leave Santa Fe until May 24, 2020.  
26  
27  
28

1 On May 29, 2020, Santa Fe protested the cancellation of Purchase Order Number  
2 P206E00310. See May 29, 2020 letter from Santa Fe to GSA attached hereto as **Exhibit G**. The  
3 grounds for Santa Fe's protest were 1) the alleged deficiencies listed in GSA's Termination Letter  
4 were non-existent; and 2) GSA failed to comply with Section IX (A)(iii) of the "agreement" or  
5 "terms and conditions" attached to the RFQ and purchase order.  
6

7 On June 1, 2020, Santa Fe invoked its contractual right to a 10 day cure period, as provided  
8 in Section IX (iii) of the "agreement." See June 1, 2020 letter from Santa Fe to GSA attached hereto  
9 as **Exhibit H**.

10 On June 9, 2020 Santa Fe sent GSA a follow up letter to its May 29, 2020 protest letter.  
11 See **Exhibit I** (letter dated June 9, 2020 from Santa Fe to GSA.)  
12

13 On June 10, 2020, GSA denied Santa Fe's protest. See Exhibit E. GSA denied Santa Fe's  
14 protest as its "review of the purchase order did not indicate that a cure language was provided for,  
15 and as such, there is no right to have one." *Id.*

#### 16 IV. STATEMENT OF GROUNDS FOR APPEAL

##### 17 A. The alleged deficiencies listed in GSA's Termination Letter were non-existent.

18 In its Termination Letter GSA lists basic terms of the agreement Santa Fe allegedly failed to  
19 meet. The first time Santa Fe learned of the specific alleged failures were in the Termination Letter.  
20 Until it received the Termination Letter Santa Fe was not aware that there were concerns as to its  
21 compliance with the terms of the purchase order and agreement. Prior to that, all Santa Fe knew  
22 from the media was that passengers quarantined at its hotel were being evacuated to another hotel  
23 and that said passengers were informed of the evacuation via letter.  
24

25 Santa Fe's position is that it was not in breach of any of the terms of the agreement. The list  
26 of concerns in the Termination Letter were non-existent. In fact, GSA representatives (Anita Cruz  
27 and Claudia Acfalle) along with Guam Homeland Security Administrator Charles Esteves walked  
28

1 the premises prior to informing Santa Fe that its quotation was accepted. GSA's basis for cancelling  
2 the purchase order was due to findings by the Guam National Guard and Homeland Security.

3       What were these findings based on? As to linen and towels, the terms and conditions  
4 specified in the agreement provide, *inter alia*, Santa Fe "provide regular linen and towel service for  
5 all persons quarantined at the facility..." It is not possible to have an issue with the linen and  
6 towel service when that service is performed weekly and the guests were on the premises for 6 days.  
7 See **Exhibit H** attached hereto (Letter dated June 1, 2020 from Santa Fe to GSA).

9       Another alleged deficiency was rooms not being fully furnished as required in the purchase  
10 order. Nowhere in the purchase order or attached agreement is "fully furnished" defined such that  
11 Santa Fe is on notice as to what its rooms lacked rendering them not fully furnished.

12       Santa Fe was already compliant with each of the items listed, with the exception of those  
13 whose compliance was contingent upon standards that were not provided. Neither the purchase  
14 order nor the "agreement" provides any specific requirements as to the items listed in the  
15 Termination Letter that put Santa Fe on notice as to the basic terms it allegedly failed to meet. At a  
16 walkthrough of the facility before any guests arrived, the rooms were deemed fully acceptable as  
17 furnished.  
18

19       GSA cannot read terms or conditions into the "agreement" or the purchase order that are not  
20 specifically included therein. To allow GSA to add terms or conditions would be in violation of the  
21 terms of the Contract as the Contract specifies that "[t]his Agreement...(ii) contains all of the  
22 covenants and Agreements between the parties with respect to each subject matter in any manner  
23 whatsoever. Exhibit A, page 11 of 27, Section XXI.  
24

25       **B. GSA wrongfully cancelled Santa Fe's Purchase Order.**

26       In denying Santa Fe's protest, citing In the Appeal of Basil Industrial Food Services, OPA  
27 Appeal No. OPA-PA 16-006 and OPA-PA-16-008, GSA takes the position that "a review of the  
28

1 purchase order did not indicate that a cure language was provided for, and as such, there is no right  
2 to have one.” Exhibit B. GSA assumed Santa Fe was referring to Procurement Regulation 2  
3 GARR § 6101(8)(a).

4  
5 In Basil, Basil relied on 2 GARR § 6101(8)(a) which provides, in relevant part, that if a  
6 contractor commits a substantial breach of the contract, the procurement officer may notify the  
7 contractor in writing of the delay or non-performance and if not cured in 10 days or any longer time  
8 specified in writing by the Procurement Officer, such officer may terminate the contractor’s right to  
9 proceed with the contract or such part of the contract as which there has been delay or failure to  
10 properly perform. Per the OPA if this regulation was applicable, GSA would have to give Basil 10  
11 days to cure any default and GSA would have wrongfully terminated Basil’s contract. The OPA  
12 held that because the language of the regulation was not included as a provision within Basil’s  
13 contract it did not apply and Basil did not have the right to invoke a 10 day cure period.  
14 Furthermore, Basil’s contract provided that in the event Basil received a C or lower rating from the  
15 Department of Public Health and Social Services, the procuring agency could immediately terminate  
16 its contract.<sup>1</sup>

17  
18 The facts of this case are distinguishable from that of Basil. Unlike Basil’s contract, Santa  
19 Fe’s Contract does not have a provision authorizing GSA to terminate it without further notice.  
20 In addition, Santa Fe’s Contract includes the ten day cure period provided by 2 GARR §  
21 6101(8)(a). Attached to the Request for Quotation were “Attachments 1. Specifications 2. Terms  
22 and Conditions” and referenced on page 1 of the RFQ. See Exhibit E attached hereto. Pursuant  
23  
24

25 <sup>1</sup> Section 12.9 of the Basil’s contract states:

26 In the event the Bidder who is awarded this [Invitation for Bid] for the provision of ENP Nutrition Services is issued a  
27 “C” rating from the Division of Environmental Health, DPHSS or is issued a “Stop Order” by the Guam Fire Department,  
the awarded Vendor may be terminated as the Vendor of the ENP Nutrition Services.

28 Basil Food Indus. Servs. Corp. v. Guam, 2019 Guam 29 ¶ 3.

1 to Section IX. A(iii), Termination for Cause Default:

2 If the Hotel refuses or fails to perform any of the provisions of this contract with such  
3 diligence as will ensure its completion within the time specified in this contract, or any  
4 extension therefore, otherwise fails to timely satisfy the contract provisions, or  
5 commits any other substantial breach of this contract, the Procurement Officer may  
6 notify the Hotel in writing of the delay or non-performance and if not cured in ten days  
7 or any longer time specified in writing by the Procurement Officer, such officer may  
8 terminate the Hotel's right to proceed with the contract or such part of the contract to  
9 which there has been delay or failure to properly perform. In the event of termination  
10 in whole or in part the Procurement Officer may procure similar supplies or services  
11 in a manner and upon terms deemed appropriate by the Procurement Officer. The Hotel  
12 shall continue performance of the contract to the extent it is not terminated and shall  
13 be liable for excess costs incurred in procuring similar goods or services.

14 In its Termination Letter GSA informs Santa Fe that it was cancelling the purchase order  
15 because Santa Fe failed to meet the terms of the "agreement." But yet, in denying Santa Fe's protest  
16 GSA takes the position that the "purchase order did not indicate that a cure language was provided  
17 for..."

18 The purchase order which was drafted by GSA includes the following language on page 1 of  
19 the purchase order: "Attachments 1. Specifications 2. Terms and Conditions.", Exhibit A. The only  
20 document attached to the purchase order is a document that begins with "Statement of Leased  
21 Premises and Services to be Performed" which must be the "agreement" GSA references in the  
22 Termination Letter. This document or "agreement" includes the 10 day cure period which GSA asserts  
23 is not part of the purchase agreement. GSA cannot simply ignore the provisions within the  
24 "agreement" which are adverse to its interest when convenient or read terms that are not included in  
25 the purchase order. *See Basil Food Indus. Servs. Corp. v. Guam*, 2019 Guam 29 ¶ 17 ("In effect, Basil  
26 asks the court to read the application of 2 GAR Div. 4 § 6101 into the terms of Section 12.9 of the  
27 contracts. But that we cannot do.").

28 GSA failed to comply with Section IX.A(iii) of the Contract on two levels. First, it failed to  
put Santa Fe on notice that it failed and refused to remedy any alleged deficiencies. The first time

1 Santa Fe was provided details as to what the issues were was in the Termination Letter. Second,  
2 GSA failed to provide Santa Fe time to cure any of the alleged deficiencies once it became aware of  
3 said deficiencies. As a result of said failures, GSA wrongfully cancelled the purchase order.  
4

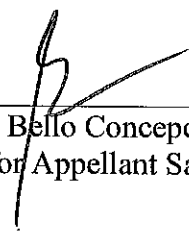
5  
6 **V. RELIEF REQUESTED BY SANTA FE**

7 Santa Fe respectfully request a ruling from the OPA as follows:

- 8 1. That GSA is in breach of the terms of the Purchase Order and Agreement;
- 9 2. That the cancellation of Purchase Order Number P206E00310 be rescinded as of  
10 May 23, 2020 and reinstated as of that date;
- 11 3. That Santa Fe be awarded the value of its purchase order;
- 12 4. For an award of reasonable attorney's fees and costs of this appeal;
- 13 5. For such other relief that the OPA may determine is just and proper; and
- 14 6. Santa Fe requests a hearing on this matter.

15  
16 Respectfully submitted this 23<sup>rd</sup> day of June, 2020.

17  
18  
19 **BROOKS CONCEPCION LAW, P.C.**

20  
21 By:   
22 Georgette Bello Concepcion, Esq.  
23 Counsel for Appellant Santa Fe  
24  
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**PURCHASE ORDER**  
 GENERAL TRADING AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

TRAN CODE

No. P236E00810

AGENCY  
 PURCHASE  
 ORDER

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TO:

HOTEL SANTA FE  
 132 LAGOON DRIVE  
 TAMUNING, GUAM 96913

PHONE: (671) 647-8855  
 FAX: (671) 647-8860

VENDOR

S

GOVERNORS OFFICE  
 P.O. BOX 1290  
 HAGATNA, GU 96912-0120

T

COVID-19 MANDATORY QUARANTINE

3113

SEE BELOW

THIS PURCHASE ORDER IS ISSUED TO COVER THE COST FOR QUARANTINE FACILITY IN RESPONSE TO THE GOVERNMENT OF GUAM IN ORDER TO UTILIZE AND REIMPOSE SUCH FACILITY FOR COVID-19 FOR 14 DAY MANDATORY QUARANTINE FOR ARRIVING PASSENGER FROM A COVID-19 AFFECTED AREAS.

TO BE PAID BY AN AS NEEDED BASIS COMMENCING UPON RECEIPT OF PURCHASE ORDER AND EXPIRING ON 31.12.20 UPON EXHAUSTION OF FUNDS WHICHEVER OCCURS FIRST.

QUARANTINE RATE: EST. \$2 RMS.  
 \$99.00 PER OCCUPIED ROOM.

NOTE:

THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.

Note: Amount due this Purchase Order may be off set for monies due the Government of Guam exclusive of but not limited to taxes, fees, and returned checks plus for other damages, penalties, and Attorney's fees, after failure to pay accordingly.

To be liquidated between the agency, and vendor

ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9)(a) OF THE GSR.

B	XXXXXXXXXXXX	A
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<b>TOTAL</b>		

*C. Estelle*

Claudia Estelle Chief Procurement Officer

PAGE 1 OF 9

*QJ-ex*





**PURCHASE ORDER**  
**GENERAL SERVICES AGENCY**  
**DEPARTMENT OF ADMINISTRATION**  
**GOVERNMENT OF GUAM**

Head Office  
 1000 Santa Rosa  
 Agaña, GUAM

**TRAN CODE**

**No. P21670100**

\$ 26,000.00 129120125211

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**TO:**

**HOTEL SANTA FE**  
**132 LAGOON DRIVE**  
**TAMUNING, GUAM 96913**  
**PHONE: (671) 647-8855**  
**FAX: (671) 647-8860**

**VENDOR**

**S** GOVERNORS OFFICE  
**I** P.O. BOX 2851  
**P** HAGATNA, GU 96932-0001  
**T**  
**O** COVID-19 MANDATORY QUARANTINE

1113

SEE BELOW

\$90.00 PER UNOCCUPIED ROOM

TO INCLUDE MEALS (BREAK, LUNCH,  
 & DINNER); LAUNDRY SERVICES;

EACH ROOM TO BE PROVIDED WITH  
 PHONE SERVICES FOR LOCAL CALLS  
 ONLY; CLEANING SUPPLIES FOR  
 EACH ROOM SUCH AS DISINFECTANT  
 SPRAY, TOILET BRUSH, TOILET  
 CLEANSER AND 2 ROPS.

**AUTHORIZED PERSONNEL:**  
 CHARLES ESTEVES 498-4411  
 LEO ESPER 498-0561  
 PATRICK LEON GUESBERG 498-0264  
 MARIE QUENGA 498-4742  
 TERVILLE CALVO 498-0511  
 MICHAEL TRIGERON 498-1070

**NOTE:**

THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.  
 Note: Amounts due this Purchase Order may be off set for monies due the Government  
 of Guam inclusive of but not limited to taxes, fees, and returned checks plus for  
 other damages, penalties, and Attorney's fees, after failure to pay accordingly.

To be coordinated between the agency, and vendor  
 ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION  
 6101(9)(a) OF THE GAR.

	XXXXXXXXXXXX
	<b>TOTAL</b>

*C. Asalla*  
 Claudia S. Asalla Chief Procurement Officer

*BJ-OK*



**PURCHASE ORDER**  
 ORIGINAL SUPPLY CENTER  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

TRAN CODE

No. 1206200000

DATE OF  
 PURCHASE  
 ORDER

3 16 2020 120620000025291

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**TO:**  
**HOTEL SANTA FE**  
**132 LAGOON DRIVE**  
**TAMUNING, GUAM 96913**  
**PHONE: (671) 647-8855**  
**FAX: (671) 647-8860**

**VENDOR**

**S**  
**H GOVERNORS OFFICE**  
**I P.O. BOX 2250**  
**P HAGATNA, GU 96912-0250**  
**T**  
**O COVID-19 MANDATORY QUARANTINE**

3113

SEE BELOW

THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

1. Acknowledgment copy of this order must be signed and returned advising approximate or definite shipping date.
2. No variation in any of the terms, conditions, deliveries, prices, quantity, quality, or specifications in this order, irrespective of the wording of the seller's acceptance, will be effective without buyer's written consent.
3. Packing list must accompany each shipment showing our order number, description and part or serial number for each item.
4. Shipments must be identified as "FURNISH" or "CONSIST".
5. Material is subject to buyer's inspection and approval within a reasonable time after delivery; if specifications are not met, material shall be returned at seller's expense.
6. In connection with any prompt payment discount offered, date will be computed from date of delivery and acceptance at destination, or from the date the correct invoice or voucher is received in the office specified by the Government of Guam, if the latter is later than date of delivery and acceptance. Payment is deemed to be made, for the purpose of earning discount, on the date of the mailing of the check.
7. Overshipments, unless specifically authorized, will not be accepted.
8. In connection with bid awards and contracts, this purchase order shall be governed by the special provisions and Bid General Terms and Conditions as specified.

A	10000.00
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<b>TOTAL</b>	

*[Signature]*

Claudia S. McFalls Chief Procurement Officer

PAGE 1 OF 5

*ok*





PURCHASE ORDER  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

TRAN CODE

No. 2019000010

DATE OF ORDER  
 APPROVAL  
 PURCHASE ORDER

DATE OF ORDER 05/16/2020

351

VENDOR

TO:

HOTEL SANTA FE  
 132 LAGOON DRIVE  
 TAMUNING, GUAM 96913  
 PHONE: (671) 647-8855  
 FAX: (671) 647-8860

VENDOR

S  
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 O  
 GOVERNORS OFFICE  
 P.O. BOX 2881  
 HARRATON, GU 96952-0288  
 COVID-19 MANDATORY QUARANTINE

FORM NO. 01113

SEE BELOW

VENDOR ACKNOWLEDGEMENT

RETURN TO SUPPLY MANAGEMENT DIVISION

DATE OF RECEIPT OF THIS ORDER

5/16/2020

SIGNATURE

*Betty A. Jackson*

RECEIVING DEPARTMENT COPY

I CERTIFY THE ABOVE ARTICLES AND/OR SERVICES HAVE BEEN RECEIVED AND OF REMERD AND THE SAME HAS BEEN INSPECTED AND ACCEPTED EXCEPT AS OTHERWISE NOTED HEREIN.

DATE RECEIVED:

SIGNATURE:

- A. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.
- B. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.
- C. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.
- D. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.
- E. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.
- F. THIS PURCHASE ORDER IS VALID FOR 90 DAYS FROM THE DATE OF ISSUANCE.

101000.00

TOTAL

*Claudia S. Retalle*  
 Claudia S. Retalle Chief Procurement Officer

PAGE 5 OF 5

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*B1-02*

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

A. This Agreement ensures Hotel will lease fully furnished hotel rooms with 24 hours supervision/service for all persons subject to the GHS OCD's quarantine orders to GHS OCD for the entire term of this Agreement and any renewals or extensions thereof.

B. Hotel shall provide regular linen and towel service for all persons quarantined at the facility. These linens and towels shall be professionally laundered/cleaned per CDC guidelines as they pertain to COVID-19.

C. Hotel agrees to provide basic house-keeping supplies for all areas of the facility

D. Hotel agrees to maintain and promptly address any concerns arising out of the physical facility, including but not limited to, air conditioning units, plumbing issues, and furniture.

E. Hotel shall provide quarantined persons with

a. Deliver palatable quality food to all quarantined persons at the facility. Food services must meet all applicable federal and local guidelines, laws, and regulations and meet the guidelines prescribed herein.

b. Provide an efficient system whereby occupants receive meals that provide proper nutrition and meet specific dietary needs of individual medical conditions, religious requirements or management plans.

c. Provide nutritious meals to quarantined person three (3) times a day, seven (7) days a week.

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

B210K

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 (1) month 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: FULLY FURNISHED UTILIZED ROOM PER DAY. (SEE ATTACHED "SPECIFICATION").

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

The Procurement Officer with the consent by GHS/OCD at any time, and without notice to the parties, 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.

*AS*

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 (I) (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.

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.

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**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**

**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.

87-01

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

(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.

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(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 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.

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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.

**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.

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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 GUS/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 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.

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**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.

**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:

**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.

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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 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.

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## 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.

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.

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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 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 non-performance, 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 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 Whistle blower Act applies to this Agreement and to all Hotel's actions pertaining to this Agreement. The False Claims and Whistle blower 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.

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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.

**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. Non-segregated 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.

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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 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).

*BJC*

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 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 1625-1627, 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.

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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 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.

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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.

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 non-discrimination 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.

*By: [Signature]*

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., 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.

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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.

**II. 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 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 non-discrimination 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.

**K. 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.

BJ-OK

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.

**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.

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**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 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 Favor.** 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.

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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, "Non-procurement 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 non-procurement transactions either through primary or lower tier covered transactions, and which 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 (Non-procurement)." 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 1210MB 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.

131-04

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 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.

#### **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.

B1-24

**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 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 losses 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.

Print Name & Sign Signature / Date  
Acknowledge Receipt of Pages 1 thru 27

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BJ 04

**EXHIBIT A 032**



**EDWARD M. BIRN**  
Director (Direktar)  
**EDITH C. PANGULINAN**  
Deputy Director (Sikundo Direktar)

**DEPARTMENT OF  
ADMINISTRATION**  
DIPATTAMENTON ATMENESTRASION

GENERAL SERVICES AGENCY  
(Ahenslan Setblasion Hinrat)  
Telephone (Telfan): (671) 475-1707/1729 • Fax (Faks): (671) 472-4217/1727



**LOURDES A. LEON GUERRERO**  
Governor (Maga'Inga)  
**JOSHUA F. TENORIO**  
Lt. Governor (Sikundo Maga'Inga)

June 10, 2020

**Mr. Bart Jackson**  
President  
Beach Resort LLC  
dba Hotel Santa Fe Guam  
132 Lagoon Drive  
Tamuning, Guam 96913

We are in receipt of your memorandum dated June 9th, 2020, in which you are disputing the termination of your purchase order to provide rooms under the emergency authorization of the Governor. You indicated you disagreed with some of the noted deficiencies, and that you have ten (10) days to cure any other noted ones.

You believe that you have ten (10) days to cure your deficiencies. As stated in *In the Appeal of Basil Industrial Food Services* Appeal No OPA-PA 16-006 and OPA-PA-16-008, the Public Auditor stated:

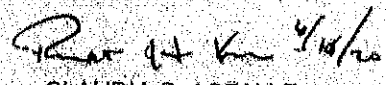
Basil relies on a procurement regulation that states, in relevant part, that if the contractor commits a substantial breach of the contract, the procurement officer may notify the contractor in writing of the delay or non-performance and if not cured in 10 days or any longer time specified in writing by the Procurement Officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. 2 G.A.R., Div.4, Chap.6 Section 6101(8)(a). If this regulation were applicable, GSA would have had to give Basil 10 day to cure its May 31, 2016 default and GSA would have then wrongfully terminated BASIL's contract due to DPHSS's June 2, 2016 follow-up inspection of BASIL's food preparation facility which found that Basil corrected most of its May 31, 2016 violations. However, the cure provisions Basil relies upon for this argument are inapplicable to its contracts for GSA-IFB 010-14 and GSA-IFB-011-14. The regulation's cure provisions is merely a contract clause, one of many mentioned in that regulation, that the Chief Procurement Officer or her designee may use at their discretion. 2 G.A.R., Div.4, Chap.6 Section 6101(1). A review of GSA-IFB-010-14 and GSA-IFB-011-1114's contractual terms reveals that the 10 day cure language set forth in 2 G.A.R., Div.4, Chap.6, Section 6101(8)(a) is absent. Hence Guam procurement regulations did not require GSA to provide Basil a 10 day cure period after its May 31, 2016 breach.

A review of the purchase order did not indicate that a cure language was provided for, and as such, there is no right to have one. As such, the termination of the purchase order was appropriate. As you are aware, the government of Guam, pursuant to the Governor's Executive Order, immediately procured hotel rooms to quarantine, isolate and provide medical support, for the COVORNA pandemic that was occurring on our island. Your hotel was selected based upon meeting the standards required to house these individuals. Shortly after signing the agreement, a second review was conducted by the National Guard, who was assigned to the location. Their review indicated that you failed to meet the basic terms



of the agreement. Such failure would cause additional hardship and inconvenience upon those that had to be placed in these facilities. Based upon these facts, we determined that the purchase order should be cancelled immediately. Your email of Maay29th,2020 did not address any new concern or facts that you change our mind.

Therefore, your protest is DENIED. You have the right to seek any administrative or judicial review authorized by law.

  
/ CLAUDIA S. AOFALLE  
Chief Procurement Officer



**PURCHASE ORDER**  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

148 Route 1  
 Marine Drive  
 Piti, Guam 96925

**TRAN CODE**

THIS PURCHASE ORDER NUMBER  
**No. P206E00326**

MUST APPEAR ON ALL INVOICES  
 PACKING SLIPS, PACKAGES, B/L,  
 CORRESPONDENCE ETC.

F.O.B.

\* AIR FREIGHT TEL. CONTACT SHIP VIA:

DATE

5/21/2020

JOB ORDER NO.

028020025230

OBJCL

230

\* FREIGHT SHOW SHIPPING CHARGES AS SEPARATE ITEM ON INVOICE

**PODZEV**

**TO:**

CORE TECH INTERNATIONAL  
 388 SOUTH MARINE CORPS DRIVE  
 SUITE 400  
 TAMUNING, GU 96913  
 Telephone: 671 473-5000 Fax: 671 473-5500  
 Email:

**VENDOR**  
 C0096647

**SHIP TO**

CONSIGNEE, DESTINATION & MARKING

GOVERNORS OFFICE  
 P.O. BOX 2950  
 HAGATNA, GU 96932-0000

COVID-19 MANDATORY QUARANTINE

AUTHORITY  
 3113

\*\* INVITATION NO.

\*\* CONTRACT NO.

TIME FOR DELIVERY  
 SEE BELOW

EXPIRING

DISCOUNT TERMS:

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	PAC
	<p>THIS PURCHASE ORDER IS ISSUED TO COVER THE COST FOR QUARANTINE FACILITY IN RESPONSE TO THE GOVERNMENT OF GUAM IN ORDER TO UTILIZE AND REPURPOSE SUCH FACILITIES FOR COVID-19 FOR 14 DAY MANDATORY QUARANTINE FOR ARRIVING PASSENGERS FROM A COVID-19 AFFECTED AREAS...</p> <p>TO BE DRAWN ON AN AS NEEDED BASIS COMMENCING UPON RECEIPT OF PURCHASE ORDER AND EXPIRING ON 8/16/20 OR UPON EXHAUSTION OF FUNDS WHICHEVER OCCURS FIRST.</p> <p>QUARANTINE RATE: EST. 270 RMS. GARDEN COURT/BAYVIEW HOTEL:</p> <p>NOTE:            THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES. Note: Amounts due this Purchase Order may be off set for monies due the Government of Guam inclusive of but not limited to taxes, fees, and returned checks other damages, penalties, and Attorney's fees, after failure to pay To be coordinated between the agency and vendor ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.</p>				100000.00	0200280175	

**SPECIAL INSTRUCTIONS TO VENDOR:**

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

XXXXXXXXXXXX

A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.

← INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

**↑ TOTAL ↑**

SIGNATURE:

*C. Acfalle*

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

Claudia S. Acfalle Chief Procurement Officer



**PURCHASE ORDER**  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

148 Route 1  
 Marine Drive  
 Piti, Guam 96925

**TRAN CODE**

THIS PURCHASE ORDER NUMBER  
**No. P206E00326**

MUST APPEAR ON ALL INVOICES  
 PACKING SLIPS, PACKAGES, B/L,  
 CORRESPONDENCE ETC.

F.O.B.

\* AIR FREIGHT TEL CONTACT SHIP VIA

DATE

5/21/2020

JOB ORDER NO.

028020025230

OBJCT

230

PREPARED SHOW SHIPPING CHARGES AND SEPARATE CARRIER INSTRUCTIONS

**VENDOR**

**TO:**

CORE TECH INTERNATIONAL  
 388 SOUTH MARINE CORPS DRIVE  
 SUITE 400  
 TAMUNING, GU 96913  
 Telephone: 671 473-5000 Fax: 671 473-5500  
 Email:

**VENDOR**

C0096647

**SHIP TO**

CONSIGNEE, DESTINATION & MARKING

GOVERNORS OFFICE  
 P.O. BOX 2950  
 HAGAFNA, GU 96932-0000

COVID-19 MANDATORY QUARANTINE

AUTHORITY  
 3113

\*\* INVITATION NO.

\*\* CONTRACT NO.

TIME FOR DELIVERY  
 SEE BELOW

EXPIRING

DISCOUNT TERMS:

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	TAX
	<p>\$140.00 PER PERSON + \$30.00            PER PERSON ADDITIONAL            FOR OCCUPIED ROOM RATE.</p> <p>-</p> <p>UNOCCUPIED HOLDING (RESERVE)            ROOM RATE: \$90.00 PER PERSON            (HOTEL OCCUPANCY TAX NOT            INCLUDED.</p> <p>FULLY FURNISHED ROOMS            INCLUSIVE OF THREE (3) MEALS:            BREAKFAST/LUNCH/DINNER; AND            LAUNDRY SERVICES;</p> <p>-</p> <p>EACH ROOM TO BE PROVIDED WITH            PHONE SERVICES FOR LOCAL CALLS            ONLY; CLEANING SUPPLIES FOR            EACH ROOM SUCH AS DISINFECTANT            SPRAY, TOILET CLEANER, TOILET            BRUSH, AND 2 RAGS.</p> <p>NOTE:            THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.            Note: Amounts due this Purchase Order may be off set for monies due the Government of Guam inclusive of but not limited to taxes, fees, and returned checks plus for other damages, penalties, and Attorney's fees, after failure to pay accordingly            To be coordinated between the agency and vendor            ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.</p>						

**SPECIAL INSTRUCTIONS TO VENDOR:**

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION: GOVERNMENT OF GUAM, P.O. BOX 894, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

XXXXXXXXXX

A. DO NOT FILL THIS ORDER  
 IF YOUR TOTAL COST  
 EXCEEDS THIS TOTAL.

**↑ TOTAL ↑**

INSERT CHANGES AND RETURN  
 THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE:

*C. Acfalle*

Claudia S. Acfalle Chief Procurement Officer



**PURCHASE ORDER**  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

148 Route 1  
 Marine Drive  
 Piti, Guam 96925

**TRAN CODE**

THIS PURCHASE ORDER NUMBER

**No.** 206E00326

MUST APPEAR ON ALL INVOICES  
 PACKING SLIPS, PACKAGES, B/L,  
 CORRESPONDENCE ETC.

F.O.B.

\*\* AIR FREIGHT TEL. CONTACT SHIP VIA

DATE

5/21/2020

JOB ORDER NO.

028020025230

OBJCT

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FREIGHT SHOW CHARGES AS SEPARATE ITEM ON INVOICE

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TO:

CORE TECH INTERNATIONAL  
 388 SOUTH MARINE CORPS DRIVE  
 SUITE 400  
 TAMUNING, GU 96913  
 Telephone: 671 473-5000 Fax: 671 473-5500  
 Email:

VENDOR

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CONSIGNEE DESTINATION & MARKING

GOVERNORS OFFICE  
 P.O. BOX 2950  
 HAGAPNA, GU 96932-0000

COVID-19 MANDATORY QUARANTINE

AUTHORITY  
 3113

\*\* INVITATION NO.

\*\* CONTRACT NO.

TIME FOR DELIVERY  
 SEE BELOW

EXPIRING

DISCOUNT TERMS:

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	PAC
	<p>AUTHORIZED PERSONNEL:            CHARLES ESTEVES 687-4821            LEO ESPIA 483-0361            PATRICK LEON GUERRERO 687-6864            MARIE QUENGA 489-4742            DENILLE CALVO 489-0581            MICHAEL TALJERON 929-1070</p> <p>INCLUSIVE OF THE ATTACHED SPECIFICATIONS &amp; TERMS AND CONDITIONS.</p> <p>EMERGENCY PROCUREMENT            EXECUTIVE ORDER 2020-04            RELATIVE TO COVID 19</p> <p>REF: 10 GCA 19403            PUBLIC HEALTH EMERGENCY            NCTE:            THE GOVERNMENT OF GUAM WILL NOT BE RESPONSIBLE FOR 'UNAUTHORIZED' PURCHASES OR SERVICES.            Note: Amounts due this Purchase Order may be off set for monies due the Government plus for accordingly of Guam inclusive of but not limited to taxes, fees, and returned checks other damages, penalties, and Attorney's fees, after failure to pay To be coordinated between the agency and vendor            ALL LATE DELIVERIES AND ACCEPTANCES ARE SUBJECT TO THE LIQUIDATED DAMAGES CLAUSE IN SECTION 6101(9) (a) OF THE GAR.</p>						

**SPECIAL INSTRUCTIONS TO VENDOR:**

- B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE.
- E. IF THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

100000.00

A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.

**↑ TOTAL ↑**

INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

SIGNATURE:

*C. Acfalle*

NAME: Claudia S. Acfalle TITLE: Chief Procurement Officer



**PURCHASE ORDER**  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

148 Route 1  
 Marine Drive  
 Piti, Guam 96925

**TRAN CODE**

THIS PURCHASE ORDER NUMBER

**No.** 2206E00326

MUST APPEAR ON ALL INVOICES  
 PACKING SLIPS, PACKAGES, B/L,  
 CORRESPONDENCE ETC.

F.O.B.

\* AIR FREIGHT TEL CONTACT SHIP VIA:

DATE

5/21/2020

JOB ORDER NO.

028020025230

OBJCT

230

PLEASE PRINT AND SHOW SHIPPING CHARGES AS SEPARATE LINES ON INVOICE

**V  
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TO:

CORE TECH INTERNATIONAL  
 388 SOUTH MARINE CORPS DRIVE  
 SUITE 400  
 TAMUNING, GU 96913  
 Telephone: 671 473-5000 Fax: 671 473-5500  
 Email:

**VENDOR**

C0096647

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CONSIGNEE, DESTINATION & MARKING

GOVERNORS OFFICE  
 P.O. BOX 2950  
 HAGATNA, GU 96932-0000

COVID-19 MANDATORY QUARANTINE

AUTHORITY  
3113

\*\* INVITATION NO

\*\* CONTRACT NO.

TIME FOR DELIVERY  
SEE BELOW

EXPIRING

DISCOUNT TERMS:

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	PAC
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- THIS ORDER IS SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:
1. Acknowledgment copy of this order must be signed and returned advising approximate or definite shipping date.
  2. No variation in any of the terms, conditions, deliveries, prices, quantity, quality, or specification on this order, irrespective of the wording of the seller's acceptance, will be effective without buyer's written consent.
  3. Packing list must accompany each shipment, showing our order number, description and part/serial number for each item.
  4. Shipments must be identified as "PARTIAL" or "COMPLETE".
  5. Material is subject to buyer's inspection and approval within a reasonable time after delivery; if specifications are not met, material shall be returned at seller's expense.
  6. In connection with any prompt payment discount offered, time will be computed from date of delivery and acceptance at destination, or from the date the correct invoice or voucher is received in the office specified by the Government of Guam, if the latter is later than date of delivery and acceptance. Payment is deemed to be made, for the purpose of earning discount, on the date of the mailing of the check.
  7. Overshipments, unless specifically authorized, will not be accepted.
  8. In connection with bid awards and contracts, this purchase order shall be governed by the Special Provisions and Bid General Terms and Conditions as specified.

**SPECIAL INSTRUCTIONS TO VENDOR:**

- A. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 884, AGANA, GUAM 96910.
- B. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION.
- C. THIS ORDER SUBJECT TO CONDITION 3 ON REVERSE SIDE.
- D. THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, ONE, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID.
- E. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.

100000.00

**A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.**

INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.

**↑ TOTAL ↑**

SIGNATURE:

*C. Acoballe*

CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.

ADVANCE PAYMENT AUTHORIZATION

PAYMENT ENCLOSED

Claudia S. Acoballe Chief Procurement Officer



**PURCHASE ORDER**  
 GENERAL SERVICES AGENCY  
 DEPARTMENT OF ADMINISTRATION  
 GOVERNMENT OF GUAM

148 Route 1  
 Marine Drive  
 Piti, Guam 96925

**TRAN CODE**

THIS PURCHASE ORDER NUMBER  
**No. 2206E00326**  
 MUST APPEAR ON ALL INVOICES  
 PACKING SLIPS, PACKAGES, B/L,  
 CORRESPONDENCE ETC.

F.O.B.	* AIR FREIGHT TEL CONTACT	SHIP VIA:	DATE 5/21/2020	JOB ORDER NO. 028020025230	CBICL 230
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<b>VENDOR</b>	<b>TO:</b> CORE TECH INTERNATIONAL 388 SOUTH MARINE CORPS DRIVE SUITE 400 TAMUNING, GU 96913 Telephone: 671 473-5000 Fax: 671 473-5500 Email:	<b>VENDOR</b> C0096647	<b>SHIP TO</b>	CONSIGNEE DESTINATION & MARKING GOVERNORS OFFICE P.O. BOX 2950 HAGATNA, GU 96932-0000  COVID-19 MANDATORY QUARANTINE	
	AUTHORITY 3113	** INVITATION NO.		** CONTRACT NO.	TIME FOR DELIVERY SEE BELOW

ITEM	ARTICLES OF SERVICES	QTY	UNIT	UNIT PRICE	AMOUNT	DOCUMENT NUMBER	TAX
	***** VENDOR ACKNOWLEDGMENT *****						
	RETURN TO SUPPLY MANAGEMENT DIVISION						
	DATE OF RECEIPT OF THIS ORDER			5/21/2020			
	SIGNATURE <i>Cd Ball</i>						
	***** RECEIVING REPORT COPY *****						
	I CERTIFY THE ABOVE ARTICLES AND/OR SERVICES HAVE BEEN RECEIVED AND/OR RENDERED AND THE SAME HAS BEEN INSPECTED AND ACCEPTED EXCEPT AS OTHERWISE NOTED HEREIN.						
	DATE RECEIVED: _____ SIGNATURE: _____						

<b>SPECIAL INSTRUCTIONS TO VENDOR:</b> B. SEND CERTIFIED ORIGINAL AND THREE (3) COPIES OF INVOICE TO DIVISION OF ACCOUNTS, DEPARTMENT OF ADMINISTRATION, GOVERNMENT OF GUAM, P.O. BOX 894, AGANA, GUAM 96910. C. PAYMENT IN THIRTY (30) DAYS UPON RECEIPT OF MERCHANDISE IN GUAM IN GOOD CONDITION. D. THIS ORDER SUBJECT TO CONDITIONS ON REVERSE SIDE. E. THIS ORDER IS SUBJECT TO THE SPECIAL PROVISIONS, AND BID GENERAL TERMS AND CONDITIONS SPECIFIED ON THIS BID. F. ON ALL AIR SHIPMENTS HAVE AIR FREIGHT COMPANY CALL THIS NUMBER UPON ARRIVAL OF GOODS IN GUAM.	100000.00	A. DO NOT FILL THIS ORDER IF YOUR TOTAL COST EXCEEDS THIS TOTAL.  INSERT CHANGES AND RETURN THIS ORDER FOR AMENDMENT.
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CONTRACTOR: PLEASE SUPPLY PROMPTLY THE ABOVE ARTICLES OR SERVICES. ALL CORRESPONDENCE PERTAINING TO THIS ORDER INCLUDING INVOICES, SHIPPING DOCUMENTS AND PACKAGES MUST BEAR THE PURCHASE ORDER NUMBER SHOWN ABOVE. SEE REVERSE SIDE FOR PURCHASE ORDER TERMS AND CONDITIONS.	ADVANCE PAYMENT AUTHORIZATION PAYMENT ENCLOSED <input type="checkbox"/>	SIGNATURE: <i>Cd Ball</i> NAME: Claudia S. Acballa TITLE: Chief Procurement Officer
---	--	--

## HOTEL NON-CONGREGATE SHELTERS

### Specification: Revised 5/12/20

**1. HOTEL QUARANTINE FACILITY.** 14 days mandatory quarantine for all arriving passengers from a COVID-19 affected area. Quarantine operations, require 154 ± 17 rooms.

#### OPTION 1

- Open purchase order for fully furnished utilized rooms to include meals and laundry services.
  
- Any non-resident individual traveling to Guam for reasons other than performance of essential governmental service functions, including, but not limited to tourists and non-resident family members will be required to pay 14 days quarantine out of pocket.
  
- Any member of the federal government or U.S. Armed Forces to include dependents traveling to Guam on official orders will be required to pay out of pocket.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

#### OPTION 2

- Lease the entire facility. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals and laundry services.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

\*\*\*\*\*

**2. HOTEL ISOLATION FACILITY.** Isolation of asymptomatic COVID-19 positive patients. For future isolation operations, will require 36 ± 11 rooms for surge.

#### OPTION 1

- Open purchase order. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals, laundry services and decontamination services.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

**OPTION 2**

- Lease all rooms on a single hotel floor. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals, laundry services, and decontamination services.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

\*\*\*\*\*

**OPTION 3**

- Is to combine the Quarantine Facility and Isolation Facility in a single facility with dedicated floors and/or wings. Create zones within the facility similar to a hospital. Site would require DPHSS and GMH assessment to determine feasibility.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

\*\*\*\*\*

**3. MEDICAL STAFF LODGING.** To provide for Housing medical staff who have sustained interactions with COVID-19 positive patients. Medical staff housing operations, require 135 ± 25 rooms.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

\*\*\*\*\*

**NOTE PREFERENCE:** To secure one (1) facility with multiple wings to house Isolation Patients, Quarantined Individuals, and Medical Staff.

**Quarantine Facility – From Floor to Wing**

**Isolation Facility – From Floor to Wing**

**Medical Staff Lodging – From Floor to Wing**

Hotel rooms must include daily cleaning supplies (i.e. disinfectant spray, toilet brush, toilet cleaner, and two (2) rags).



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

A. This Agreement ensures Hotel will lease fully furnished hotel rooms with 24 hours supervision/service for all persons subject to the GHS OCD's quarantine orders to GHS OCD for the entire term of this Agreement and any renewals or extensions thereof.

B. Hotel shall provide regular linen and towel service for all persons quarantined at the facility. These linens and towels shall be professionally laundered/cleaned per CDC guidelines as they pertain to COVID-19.

C. Hotel agrees to provide basic house-keeping supplies for all areas of the facility

D. Hotel agrees to maintain and promptly address any concerns arising out of the physical facility, including but not limited to, air conditioning units, plumbing issues, and furniture.

E. Hotel shall provide quarantined persons with

- a. Deliver palatable quality food to all quarantined persons at the facility. Food services must meet all applicable federal and local guidelines, laws, and regulations and meet the guidelines prescribed herein.
- b. Provide an efficient system whereby occupants receive meals that provide proper nutrition and meet specific dietary needs of individual medical conditions, religious requirements or management plans.
- c. Provide nutritious meals to quarantined person three (3) times a day, seven (7) days a week.

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

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 (1) month 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: FULLY FURNISHED UTILIZED ROOM PER DAY. (SEE ATTACHED "SPECIFICATION").

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

The Procurement Officer with the consent by GHS/OCD at any time, and without notice to the parties, 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.

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 (I) (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.

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**

**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.

(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 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.

#### **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 GUS/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 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..



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 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.**

The GHSJOCD, 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 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 non-performance, 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 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 Whistle blower Act applies to this Agreement and to all Hotel's actions pertaining to this Agreement. The False Claims and Whistle blower 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.

**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. Non-segregated 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 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 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 1625-1627, 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 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.

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 non-discrimination 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., 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 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 non-discrimination 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.

K. 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.

**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 II 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 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 Favor. 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 II (Ethics in Public Contracting) of the Guam Procurement Law and in Article II 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, "Non-procurement 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 non-procurement transactions either through primary or lower tier covered transactions, and which 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 (Non-procurement)." 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 1210MB 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 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.

#### **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 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.

# Hotel Santa Fe - Guam

## HOTEL NON-CONGREGATE SHELTERS

**Specification: Revised 5/12/20**

**1. HOTEL QUARANTINE FACILITY.** 14 days mandatory quarantine for all arriving passengers from a COVID-19 affected area. Quarantine operations, require 154 ± 17 rooms.

**OPTION 1**

- Open purchase order for fully furnished utilized rooms to include meals and laundry services.
- Any non-resident individual traveling to Guam for reasons other than performance of essential governmental service functions, including, but not limited to tourists and non-resident family members will be required to pay 14 days quarantine out of pocket.
- Any member of the federal government or U.S. Armed Forces to include dependents traveling to Guam on official orders will be required to pay out of pocket.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

*No quote*

**OPTION 2**

- Lease the entire facility. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals and laundry services.

*103 rooms*

Occupied Room Rate \$ 99.00

Unoccupied Holding (Reserve) Room Rate \$ 90.00

\*\*\*\*\*

**2. HOTEL ISOLATION FACILITY.** Isolation of asymptomatic COVID-19 positive patients. For future isolation operations, will require 36 ± 11 rooms for surge.

**OPTION 1**

- Open purchase order. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals, laundry services and decontamination services.

*\* min.*

Occupied Room Rate \$ 99.00

Unoccupied Holding (Reserve) Room Rate \$ 90.00

*60 rooms*

**OPTION 2**

- Lease all rooms on a single hotel floor. Holding fee will be paid for unutilized rooms at a rate less than the room rate to include meals, laundry services, and decontamination services.

Occupied Room Rate \$ \_\_\_\_\_

Unoccupied Holding (Reserve) Room Rate \$ \_\_\_\_\_

*No quote*

**OPTION 3**

- Is to combine the Quarantine Facility and Isolation Facility in a single facility with dedicated floors and/or wings. Create zones within the facility similar to a hospital. Site would require DPHSS and GMH assessment to determine feasibility.

Occupied Room Rate \$ 99.00

Unoccupied Holding (Reserve) Room Rate \$ 90.00

*\* 5 floors*

*103*

*rooms -*

*entire*

*facility combined*

**3. MEDICAL STAFF LODGING.** To provide for Housing medical staff who have sustained interactions with COVID-19 positive patients. Medical staff housing operations, require 135 ± 25 rooms.

Occupied Room Rate

\$ 135.00

Unoccupied Holding (Reserve) Room Rate

\$ 90.00

*\* 103 rooms available*

*60 rooms minimum*

✓ **NOTE PREFERENCE:** To secure one (1) facility with multiple wings to house Isolation Patients, Quarantined Individuals, and Medical Staff.

Quarantine Facility – From Floor to Wing

Isolation Facility – From Floor to Wing

Medical Staff Lodging – From Floor to Wing

✓ Hotel rooms must include daily cleaning supplies (i.e. disinfectant spray, toilet brush, toilet cleaner, and two (2) rags).

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

A. This Agreement ensures Hotel will lease fully furnished hotel rooms with 24 hours supervision/service for all persons subject to the GHS/OCD's quarantine orders to GHS/OCD for the entire term of this Agreement and any renewals or extensions thereof.

B. Hotel shall provide regular linen and towel service for all persons quarantined at the facility. These linens and towels shall be professionally laundered/cleaned per CDC guidelines as they pertain to COVID-19.

C. Hotel agrees to provide basic house-keeping supplies for all areas of the facility

D. Hotel agrees to maintain and promptly address any concerns arising out of the physical facility, including but not limited to, air conditioning units, plumbing issues, and furniture.

E. Hotel shall provide quarantined persons with

a. Deliver palatable quality food to all quarantined persons at the facility. Food services must meet all applicable federal and local guidelines, laws, and regulations and meet the guidelines prescribed herein.

b. Provide an efficient system whereby occupants receive meals that provide proper nutrition and meet specific dietary needs of individual medical conditions, religious requirements or management plans.

c. Provide nutritious meals to quarantined person three (3) times a day, seven (7) days a week.

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

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 (1) month 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: FULLY FURNISHED UTILIZED ROOM PER DAY. (SEE ATTACHED "SPECIFICATION").

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

The Procurement Officer with the consent by GHS/OCD at any time, and without notice to the parties, 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.



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 (I) (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.

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**

**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.

(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 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.

#### 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 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.

**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:

**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 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.**

The GHSJOCD, 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 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 non-performance, 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 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 Whistle blower Act applies to this Agreement and to all Hotel's actions pertaining to this Agreement. The False Claims and Whistle blower 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.

**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. Non-segregated 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 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 tortious 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 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 1625-1627, 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 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.

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 non-discrimination 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., 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 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 non-discrimination 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.

K. 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.

**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 II 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 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 Favor.** 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 II (Ethics in Public Contracting) of the Guam Procurement Law and in Article II 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, "Non-procurement 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 non-procurement transactions either through primary or lower tier covered transactions, and which 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 (Non-procurement)." 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 1210MB 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 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.

#### **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 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.





ARO M. BERN  
Director (Dipkati)

EDITH C. PANGSUNAN  
Deputy Director (Mgawo Direktori)

**DEPARTMENT OF  
ADMINISTRATION**  
DIPATTAMENTON ATMENESTRASION  
GENERAL SERVICES AGENCY  
(Ahensan Salsision Hinrat)

Telephona (Tel/oni): (671) 473-1707/1710 • Fax (Foksi): (671) 472-4217/1727



LORENZO A. LEON BILARDO  
Governor (Maga Mags)

JOHUA F. TINONG  
Lt. Governor (Ligandor Maga Mags)

May 27, 2020

Mr. Bart Jackson  
Hotel Santa Fe  
Attn: Mikl Yokozeki  
Hotel Manager  
132 Lagoon Drive  
Tamuning, Guam 96913

**TERMINATION OF PURCHASE ORDER**

This is to inform you that your purchase order number P206E00310, has been cancelled. The reason for the cancellation is based on their findings by the National Guard and Homeland Security on their walk through on Saturday, May 23, 2020 of your failure to meet the terms of the agreement.

Such failures included, but not limited to:

- a. Rooms not being fully furnished as required in the purchase order.
- b. 24 hour supervision Not provided.
- c. Linen and Towel Service
- d. Basic Housekeeping supplies, not being provided.
- e. Lobby Area not being adequately air conditioned.
- f. Failure to provide adequate meals for incoming passengers
- g. No food handling transfer equipment being used nor temperature-controlled water per meal period when meals were delivered.
- h. You did not provide enough food transport equipment to meet 100+ meals plus water per meal period for five floors.
- i. You did not provide hand sanitation, sanitizer sprays/wipes and gloves to properly handle food preparations and deliveries.
- j. Hotel's fire alarm is not inoperable putting our staff and guests in a potential fire risk, which does not meet safety and protection standards.

Based upon these violations, we are cancelling the purchase order effective May 23, 2020.

*[Signature]*  
ARON M. BERN

**EXHIBIT F**

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

May 29, 2020

Dear Anita and Claudia,

I am in receipt of your letter cancelling the Purchase Order P206E00310, providing rooms for the quarantine of individuals. As per our agreement, I appreciate your communication of these concerns. Also, as per our agreement, we have 10 days to cure the default. In other words, we will address all of the items, line by line and fully address each to your satisfaction. All of the issues that you mentioned will become compliant in advance of the 10 days cure period, if not so already. At that time, we can again receive individuals who are required to stay in a quarantine facility.

- A. This is incorrect. All rooms are fully furnished. This may refer to the absence of coffee makers and microwaves in some rooms. As per our conversation during the hotel inspection on Friday, May 15, 2020, with both of you present, I told you that some rooms have microwaves and some rooms don't. I said the same thing about coffee makers. You stated that this was not an issue, and we did not have to equip all rooms with the same appliances. Further, there is no list of items that need to be in every room in order to be considered "fully furnished." If you can provide a list, we will address and be fully compliant. And, other than for microwaves and coffee makers, which were provided later, there were no requests for additional furnishings. I trust that you are not referring to our phone issue. As you will recall, I told you during the inspection that our phone switch was down. As an alternative, all rooms were provided with cell phones to call for assistance. Further, all rooms were provided with information letters identifying whom to call and their contact numbers. On May 19, all rooms had working cell phones.
- B. This is incorrect. There was 24 hour supervision. I will forward the hotel work schedule to demonstrate that not only was there 24 hour supervision, there was 24 hour access. There were no specific guidelines in the agreement regarding staffing.
- C. This is incorrect. All rooms were provided with the requisite number of towels and linens. As with the other hotels being used for quarantine services, linens were to be changed out weekly. As our rooms were used for fewer than 7 days, there was no possible violation. Hotel management was asked by some rooms to provide additional linens and bath towels. All of these requests were responded to, without exception. There were no concerns that went unaddressed.

**EXHIBIT G 001**

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

- D. This is incorrect. All housekeeping supplies, as outlined in the contract were provided.
- E. The Lobby Area, which was inspected by you and the inspection group is warmer than expected. We have already begun the sourcing for a replacement unit to correct this situation.
- F. This is incorrect. In every case, adequate meals were provided for all guests, based upon counts provided by the National Guard. On one occasion, a room with 4 guests (4 guests is above the approved occupancy per room) arrived close to 11pm. Our dinner service is from 6pm-8pm. If guests arrive after the meal period, there is no meal provided to them. If this is a request by National Guard (it was not), then we will comply.
- G. There is no beverage request or requirement in the contract. At least one of the other quarantine facilities also does not provide any water for their meals. If it is a requirement for all facilities, we will comply. Further, there were no guidelines provided in the agreement for the handling of food transfers. We ordered our meals from 3 Squares restaurant, which is only 5 minutes away. For every meal period, meals were delivered while still hot. There was no need for any temperature controlled transfer equipment. But, as mentioned before, we will fully comply with the guidelines, when provided.
- H. The distribution of food was handled by the National Guard staff at their request. There were no guidelines in the agreement regarding the methods of transfer or requested equipment. We will fully comply with the guidelines, when provided.
- I. We were not provided any guidelines by National Guard relative to the need for any specific sanitizing equipment for the purpose of food handling and deliveries. There were no guidelines in the agreement. We will fully comply with the guidelines, when provided.
- J. This is incorrect. The hotel's fire alarm is fully operational and the hotel is fully compliant with all fire safety regulations. As the hotel was empty for 6 weeks, the hotel upgraded its fire alarm system. The system is full operational, but it not yet certified. As per GFD regulations, we have had a 24 hour fire watch in effect, until such time that the system finishes its final certification.

I appreciate your effort in making us aware of these issues. Most of them are misunderstandings or in some instances, failure by the National Guard to communicate that what their guidelines are. The Hotel Santa Fe is in full compliance with the terms of the contract, as provided on May 16, 2020. Per that agreement, had the National Guard, or the managing entity in the hotel communicated these concerns to the hotel staff, they would have been rectified immediately. The agreement gives us the opportunity to address all concerns (requires us to address all concerns) to remain in compliance and avoid the termination. In this case, without any the communication of any specific concerns, we were prevented from properly addressing

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913 ·  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

any of the above issues. Had the National Guard or other managing entity shared their concerns with management, all items would have been explained and addressed without delay.

I respectfully request that you respond to this letter as quickly as possible. As you know, the cure period is underway effective 5/27/20, when the official list of concerns was provided to us by GSA.

I want to thank you again for this opportunity to address the above concerns and commit to the full compliance of all unaddressed items within the mandated 10 day cure period.

Kind regards,



Bart Jackson  
President  
Beach Resorts LLC  
Diva Hotel Santa Fe Guam

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

June 1, 2020

Dear Anita and Claudia,

As a further clarification to my letter to GSA on May 29, 2020, I am invoking our contractual right to a 10 day cure period, as provided in the contract, section IX (iii).

Since GSA did not provide us with their concerns, as per the agreement, I will begin counting the 10 day cure from the day we received the list of concerns, May 27, 2020. The 10 day period will end on June 6, 2020.

However, as I point out in my previous response, the hotel is already compliant with each of the items listed, with the exception of those whose compliance was contingent upon standards that were not provided. As per our agreement, we have gladly and timely complied with any and all of the contractual requirements, with the possible exception of those items where the requirements were not shared or were too ambiguous to follow. Consequently, our position is that our contract remains in good standing, as it has been since May 16, 2020.

Further, we are concerned regarding whether those supervising the contract have acted in bad faith. To cite one example. How is it possible to have an issue with the linen and towel service, when that service is performed weekly, and the guests were on the premises for 6 days? Someone is doing GSA a disservice by providing you with false and misleading information.

Regardless, the point I want to make is that we were in compliance and remain in compliance with the contract as signed.

I look forward to hearing from you.  
Thank and kind regards,

Bart Jackson



**EXHIBIT H**

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

June 9, 2020

Mr. Charles Esteves/Guam Homeland Security  
Ms. Claudia Acfalle/General Services Agency

Hafa Adai Ms. Acfalle and Mr. Esteves,

This letter will serve as a formal protest by Beach Resorts LLC, dba Hotel Santa Fe – Guam against GSA and Guam Homeland Security for violating the terms and conditions of the contract entered into for housing quarantine visitors due to the COVID-19 Pandemic. We only received notice of the government's decision to unilaterally terminate the agreement as of May 23, 2020 in a letter dated May 27, 2020, wherein the government for the first time informed Santa Fe of its concerns. The contract was wrongfully terminated and without legal basis.

As per Section 9 (iii) of the contract, any specific concerns or discrepancies were required to be communicated to the hotel in WRITING. The contract mandates the hotel be given a 10-day cure period in order to address any default. None of the concerns listed in the termination letter were ever communicated to the Hotel, ownership, or hotel staff other than in the May 27, 2020 letter. Pursuant to the May 27, 2020 letter, the contract was retroactively cancelled on May 23, 2020. Cancelling the agreement before addressing any concerns is in violation of the contract. Again, no concerns were communicated to the Hotel until May 27, 2020.

On May 27, 2020, GSA informed the Hotel that the contract had been terminated for cause. At that time, they provided a list of the concerns that were cited as the "cause" for termination. As I pointed out in my response dated May 29, which is hereby incorporated by reference, most, if not all, of the reasons the contract was terminated are false. If anyone representing the contracting agencies had brought these items to management's attention (as per the contract's requirement), an explanation of the misunderstanding would have been provided. Relative to the other claims, these resulted from "unofficial" standards which were not included in the contract. The government cannot read terms into the contract that are not expressly stated. The Hotel is responsible for abiding by the contract. In all cases, the Hotel followed the contract and remained in compliance. If there were concerns, they needed to be brought to the attention of management or the owners. They were not. The entity creating the agreement has the burden of clarity. There were requests for items outside of the contract that were denied. If there were concerns regarding these items, they were to be shared with the Hotel. It is the responsibility of the contracting agent to officially inform the Hotel, in case of concerns with compliance. There were none shared, until after the agreement was already cancelled.

The Hotel was always in compliance with the terms of the contract. The lone item on the list of concerns that is even worth discussing is the air conditioning in the lobby. Even though the inspection group (including the 2 of you) approved the lobby without comment, we do recognize that it was warmer than anticipated. As I mentioned in my letter on May 29, 2020, that concern was being addressed, with the unit being repaired. This was not a material concern. Regardless, it has long been rectified. There are no other concerns from the list which are violations. Again, the list of concerns set forth in the May 27, 2020 letter were largely contrived.

**EXHIBIT I 001**

HOTEL  
**SANTA FE**  
GUAM

132 Lagoon Drive, Tamuning, Guam 96913  
Tel. No. (671) 647-8855/8859 Fax No. (671) 647-8860

On June 5, 2020, the GSA sent the Santa Fe a Request For Quotation for a new contract to house individuals who test positive for COVID-19.. Why would GSA send a new procurement to the Hotel if there was any concern as to whether the Santa Fe was in full compliance of the original contract? Clearly, GSA considered the Hotel to be in compliance with the terms of the original contract.

GSA and Homeland Security wrongfully terminated the contract. The Hotel was not provided WRITTEN notice, as required by the contract, nor at the very least informal notice, of any concerns before the contract was cancelled. There was no 10-day cure provided. The list of concerns were inaccurate or non-existent. In fact, upon further inspection of other quarantine facilities, the procedures in place at the Santa Fe were identical to or superior to those at the other lodging establishments. It is the government who is in breach of the contract and NOT the Santa Fe.

The Hotel Santa Fe – Guam seeks reinstatement of its contract and damages incurred from the wrongful termination of same.

However, without waiving any claims Santa Fe has against the government arising out of the wrongful termination of the contract, the Santa Fe is amenable to resolving this dispute amicably with GHS and GSA. I look forward to discussing with you in more detail.

Thank you.

Sensefamente,



Bartley A. Jackson  
President  
Beach Resorts LLC  
Dba, Hotel Santa Fe Guam