

DANNY A. MATEO
County Clerk



JOSIAH K. NISHITA
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

July 20, 2018

OFFICE OF THE
COUNTY COUNCIL

2018 JUL 20 PM 3:24

RECEIVED

Honorable Riki Hokama, Chair
Budget and Finance Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Hokama:

By letter dated July 10, 2018 (County Communication No. 18-270), the Director of Finance transmitted 81 contracts/grants for filing with the County Clerk.

At the July 20, 2018 Council meeting, the foregoing communication was filed; however, Contract No. C6480 was referred to your Committee at your request. Transmitted is a copy of the contract.

Respectfully,

A handwritten signature in black ink that reads "Danny A. Mateo".

DANNY A. MATEO
County Clerk

/jym

Enclosures

cc: Director of Council Services


CONTRACT CERTIFICATION

I, **MARK R. WALKER**, Director of Finance of the County of Maui, State of Hawaii, do certify that there is available appropriation or balance of an appropriation over and above all outstanding contracts, sufficient to cover the amount required by the foregoing contract, i.e.

Appropriation Index	Title	Amount Required
		\$0.00

CONTRACT NO. C 6480 FIRST HAWAIIAN LEASING, INC.

Date: 25 day of JUNE 2018
Time of Performance: Two (2) Years from NTP



MARK R. WALKER
Director of Finance

Lease Line of Credit for
the County of Maui for FIN
IFB #17-18/P55

FY 2018

jh 



CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

Department: Department of Finance
Project Title: Lease Line of Credit for the County of Maui
IFB No.: 17-18/P55
Certification Requested from County: \$0.00

This CONTRACT is made and entered into by and between the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, hereinafter referred to as the "County", and FIRST HAWAIIAN LEASING, INC., a Hawaii corporation, whose mailing address is P.O. Box 1240, Honolulu, Hawaii 96807, hereinafter referred to as the "Contractor". County and Contractor shall hereinafter be referred to collectively as the "Parties".

Source of Funds. The source(s) and availability of the funds for this Contract shall be as set forth in the Contract Certification signed by the Director of Finance of the County of Maui on or before the effective date of this Contract. Contract Certification shall be on file in the office of the Director of Finance of the County of Maui.

RECITALS:

WHEREAS, the County has issued an invitation for competitive sealed bidding ("IFB"), as identified above, and has received and reviewed bids submitted in response to the IFB; and

WHEREAS, the County has issued its Request for Competitive Sealed Proposals No. 17-18/P-55 for a Lease Line of Credit for the County of Maui ("RFP"), as identified above, and has received and reviewed proposals submitted in response to the RFP; and

WHEREAS, the Contractor has been identified as the responsible offeror whose proposal was determined to be the most advantageous, taking into consideration price and the evaluation factors set forth in the RFP; and

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

WHEREAS, the County desires to retain and engage the Contractor to provide the goods or services, or both, as those terms are defined in Section 103D-104, Hawaii Revised Statutes ("HRS"), as described in this Contract and its attachments, and the Contractor desires to provide such goods or services, or both, for, and on behalf of, the County; and

WHEREAS, pursuant to Section 46-1.5(4), HRS, the County is authorized to enter into this Contract.

NOW, THEREFORE, in consideration of the following mutual promises and agreements set forth, the Parties agree as follows:

1. Scope of Work. The Contractor shall, in a proper and satisfactory manner as determined by the County, provide all goods or services, or both, in accordance with this Contract, RFP No. 17-18/P-55, and any attachments thereto, Contractor's Offer Form or Proposal dated January 3, 2018, the "Master Lease Agreement No. ____," attached hereto as Exhibit 1, the sample Lease Rider and Lease Schedule, attached collectively hereto as Exhibit 2, and the Term Sheet, attached as Exhibit 3 (hereinafter, collectively, "Contract Documents"). Contract Documents are on file in the office of the Director of Finance of the County of Maui, and are incorporated herein by reference and hereby made a part of this Contract.

2. Time of Performance. The Contractor shall commence performance under this Contract upon issuance of the Notice to Proceed, and shall continue performance for two (2) years therefrom, unless sooner completed, terminated, or extended in compliance with the terms of this Contract.

This Contract may be extended for 3 additional terms of 1 year each, upon mutual agreement in writing. It is understood that to exercise each extension option, the parties will execute an Amendment to the Contract.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

3. Compensation and Payment Schedule. The Contractor shall be compensated for services rendered and costs incurred under this Contract for a total amount not to exceed \$2,500,000.00, subject to appropriation, and inclusive of all taxes. It is expressly agreed and understood that each lease of Equipment shall be specified in a Lease Rider and Lease Schedule to be executed prior to County will pay Contractor in accordance with the fee schedule set forth in the Contractor's Lease Schedule pertaining to the Equipment.

4. Non-Appropriation of Funds. In the event sufficient funds shall not be appropriated by the Maui County Council for the payment of lease payments under this Contract, including any Lease Rider or Lease Schedule, required to be paid in the next succeeding fiscal year to continue the leasing any equipment under this Contract, the County may terminate this Contract or any portion thereof related to specific leased equipment, without penalty, at the end of the then-current fiscal year, and the County shall not be obligated to make payment of the rental/lease payments provided for in the Contract, Lease Rider, or Lease Schedule beyond the then-current fiscal year. Such termination shall not be considered or treated as an event of County default under the Contract or any other document. If the Contract or any part of it is terminated under this section, the County agrees to surrender to the Contractor, or its assignee, the related equipment, pursuant to the terms of Section 4.03 of the Lease Rider, attached hereto as Exhibit 2.

County and Contractor understand and intend that County's obligation to make payments and pay other amounts due under the Contract shall constitute a current expense and shall not in any way be construed to be a debt in contravention of any applicable constitutional or statutory limitations or requirements concerning County's creation of indebtedness, nor shall anything contained herein constitute a pledge of County's tax revenues, funds, or monies.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

5. General Conditions. The Contractor shall comply with the General Conditions of this Contract (the "General Conditions"), which are attached hereto and are hereby made a part of this Contract.

6. Standards of Conduct Declaration. The Standards of Conduct Declaration of the Contractor is attached hereto and is made a part of this Contract.

7. Other Terms and Conditions. Any Special Conditions are attached hereto and made a part of this Contract. In the event of any inconsistencies or conflict between the General Conditions and the Special Conditions, the Special Conditions shall control. Any general, miscellaneous, or other terms, conditions, or provisions that are found in any of the Contractor's proposals for this Contract or in any sub-contractor's proposals attached thereto shall be unenforceable as against the County, unless the subject of such terms, conditions, or provisions is addressed in the County's General Conditions, and such terms, conditions, or provisions are consistent with the County's General Conditions.

8. *[This paragraph is intentionally left blank.]*

9. Conflict. In the event of any conflict between or among this Contract and other documents that are attached hereto or incorporated herein by reference or both, the terms of this Contract shall control first, the County's General Conditions second, other documents prepared by the County third, and documents prepared or submitted, or both, by the Contractor last.

10. Notices. Any written notice required to be given by a party to this Contract shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid. Notice required to be given to the County shall be sent to:

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

Procurement Officer
Department of Finance
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Notice to the Contractor shall be sent to the Contractor's address as indicated in this Contract. A notice shall be deemed to have been received three (3) days after mailing or at the time of actual receipt, whichever is earlier. The Contractor is responsible for notifying the County in writing of any change of address.

11. Officer-in-Charge. The Director of Finance, or an authorized representative, shall be the Officer-in-Charge for all services provided herein, and shall have the right to oversee the successful completion of contract requirements, including monitoring, coordinating and assessing Contractor's performance and approving completed work/services with verification of same for Contractor's invoices or requests for payment. The Officer-in-Charge also serves as the point of contact for the Contractor from award to contract completion.

IN WITNESS WHEREOF, the Parties execute this Contract by their signatures, on the dates below, to be effective as of the date of last signature hereto.

EXECUTION PAGES FOLLOW
[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]


CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

I hereby represent and warrant that I have the legal right and authority to execute this Contract on behalf of the Contractor.

CONTRACTOR:

FIRST HAWAIIAN LEASING, INC.

By 
(Signature)

Brian Y. C. Lau
(Print Name)

Its Senior Vice President
(Title)

Date 6/18/18

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

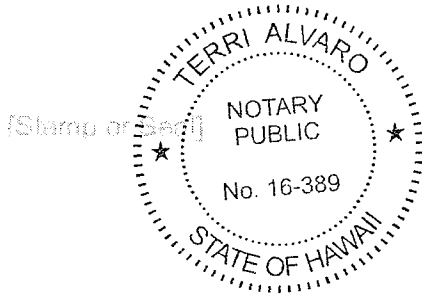
CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

STATE OF Hawaii)
City + County of Honolulu) SS.

On this 18th day of June, 2018, before me personally appeared Brian Y.C. Lau, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



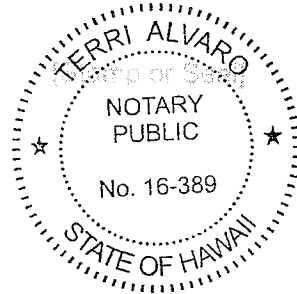
[Handwritten Signature]

Notary Public, State of Hawaii

Print Name: Terri Alvaro

My commission expires: NOV 20 2020

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>Undated at the time of notary</u>	# Pages:	<u>55</u>
Notary Name:	<u>Terri Alvaro</u>	Judicial Circuit:	<u>1st</u>
Doc. Description:	<u>Contract No. C6480</u> <u>Contract For Goods + Services</u>		
Notary Signature:	<i>[Handwritten Signature]</i>		
Date:	<u>JUN 18 2018</u>		



in NHP


CONTRACT NO. C6480
CONTRACT FOR GOODS & SERVICES
COUNTY EXECUTION PAGE

COUNTY OF MAUI

By 
MARK R. WALKER
Its Finance Director

Date JUN 20 2018

APPROVED AS TO FORM
AND LEGALITY:


RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui

Date 6/20/2018

LF2018-0298

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

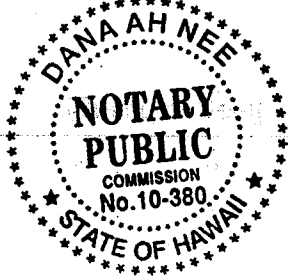
CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 20th day of June, 2018, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



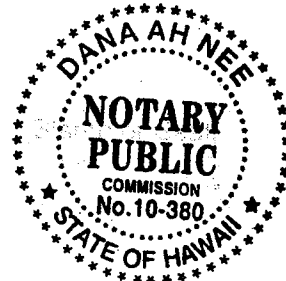
Dana Ah Nee

Notary Public, State of Hawaii

Print Name: DANA AH NEE

My commission expires: NOV 14 2018

NOTARY PUBLIC CERTIFICATION			
Doc. Date:	<u>JUN 20 2018</u>	# Pages:	<u>55</u>
Notary Name:	<u>DANA AH NEE</u>	Judicial Circuit:	<u>2nd</u>
Doc. Description:	<u>Contract no. C6480 - Contract for Goods + Services - Lease Line of Credit for the County of Maui, IFB NO. 17-18/P55</u>		
Notary Signature:	<u>Dana Ah Nee</u>		
Date:	<u>JUN 20 2018</u>		



CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

CONTRACTOR'S STANDARDS OF CONDUCT DECLARATION

For the purposes of this declaration:

"Substantial interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest is greater or less than fifty per cent (50%).

"Employee" means any nominated, appointed, or elected officer or employee of the County, including members of boards, commissions, and committees, and employees under contract to the County, but excluding members of the County Council ("County Council Members").

On behalf of FIRST HAWAIIAN LEASING, INC. Contractor, the undersigned does declare as follows:

1. Contractor is is not a County Council Member or an Employee or a business in which a County Council Member or an Employee has a substantial interest.
2. Contractor has not been represented or assisted personally in the matter by an individual who has been an Employee of the County department awarding this Contract within the preceding year and who participated while so employed in the matter with which the Contract is directly concerned.
3. Contractor has not been assisted or represented by a County Council Member or Employee for a fee or other compensation to obtain this Contract and will not be assisted or represented by a County Council Member or Employee for a fee or other compensation in the performance of this Contract, if the County Council Member or Employee has been involved in the development or award of the Contract.
4. Contractor has not been represented on matters related to this Contract, for a fee or other consideration by an individual who, within the past twelve (12) months, has been an Employee, or in the case of the County Council, a County Council Member, and participated while an Employee or a County Council Member on matters related to this Contract.

*Reminder to agency: If the "is" block is checked and if the Contract involves goods or services of a value in excess of \$500, the Contract may not be awarded unless the Contract is made after competitive bidding.

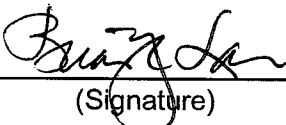
CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

Contractor understands that the Contract to which this document is attached is voidable on behalf of the County if this Contract was entered into in violation of any provision of Article 10 of the Revised Charter of the County of Maui ("Code of Ethics"), including the provisions which are the source of the declarations above. Additionally, any fee, compensation, gift, or profit received by any person as a result of a violation of the Code of Ethics may be recovered by the County.

CONTRACTOR:

FIRST HAWAIIAN LEASING, INC.

By 
(Signature)

Brian Y. C. Lau
(Print Name)

Its Senior Vice President
(Title)

Date 6/18/18

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

SPECIAL CONDITIONS

The "Master Lease Agreement No. __," attached to the Contract as Exhibit 1 is amended as follows:

1. Paragraph 4 is deleted in its entirety.
2. Paragraph 8(c)(v) is amended in full as follows:

“(v) to the extent permitted by law and approved by the Maui County Council pursuant to Chapter 3.16, Maui County Code, to defend, indemnify and hold the Lessor harmless from and against all claims, damages, actions, costs and expenses (including attorneys’ fees) and liabilities arising out of or connected with the Lessee’s rejection of the Equipment.”
3. Paragraph 11, “Insurance,” is replaced in its entirety with Paragraph 5.01 of the Lease Rider, attached hereto as Exhibit 2.
4. Paragraph 14, “Security Deposit,” is deleted in its entirety.
5. Paragraph 27, “Indemnification,” is replaced in its entirety with Paragraph 7.02 of the Lease Rider, attached hereto as Exhibit 2.
6. Section (b) of Paragraph 28 is deleted in its entirety.

The Term Sheet, attached to the Contract as Exhibit 3, is amended as follows:

1. The paragraph titled “Interim/Progress Funding” is amended in full as follows:

“Any progress payment(s) or interim funding to the vendor(s) will be under a 180-day Recourse Agreement accruing at an Interest Rate of 90% of First Hawaiian Bank’s Prime Rate, floating. Repaying interest only monthly, with principal to be taken out by a lease transaction/schedule at lease commencement or delivery and acceptance of the financed equipment.”
2. The paragraph titled “Documentation Fees” is amended in full as follows:

“No documentation fee will be charged. The County will reimburse First Hawaiian Leasing, Inc. the actual UCC filing fee upon presentation of sufficient documentation of the expense.”

The County of Maui General Conditions for Goods & Services Contracts, attached to the Contract, is amended as follows:

1. The following sections are deleted in their entirety: (a) Section 30 titled “Insurance;” (b) Section 31 titled “Liens and Warranties;” (c) Section 32 titled “Audit of Books and Records of the Contractor;” and (d) Section 37 titled “Patented Articles.”
2. Subsection 5) of Section 21 titled “Price Adjustment” shall be deleted in its entirety.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

**COUNTY OF MAUI
GENERAL CONDITIONS
FOR GOODS & SERVICES CONTRACTS**

1. COORDINATION OF SERVICES BY THE COUNTY. The Officer-in-Charge shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in this Contract. The CONTRACTOR shall maintain communications with the Officer-in-Charge at all stages of the CONTRACTOR's work, and submit to the head of the purchasing agency for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any COUNTY department or division which is authorized to enter into contracts for the procurement of goods and services.

2. RELATIONSHIP OF PARTIES: INDEPENDENT CONTRACTOR STATUS AND RESPONSIBILITIES, INCLUDING TAX RESPONSIBILITIES.

a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this agreement; however, the COUNTY shall have a general right to inspect work in progress to determine whether, in the COUNTY's opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the COUNTY does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the COUNTY.

b. The CONTRACTOR and the CONTRACTOR's employees and agents are not by reason of this Contract, agents or employees of the COUNTY for any purpose, and the CONTRACTOR and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the COUNTY any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to the COUNTY employees.

c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.

d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes and (iii) general excise taxes. Unless provided otherwise by agreement between the parties, the CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.

e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with Section 237-9, Hawaii Revised Statutes ("HRS"), and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR have been paid and submit the same to the COUNTY prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under Section 103-53, HRS and Paragraph 17 of these General Conditions.

f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and sections 3-122-112, Hawaii Administrative rules, ("HAR") that is current within six months of the date of issuance.

h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.

3. PERSONNEL REQUIREMENTS.

a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform this Contract.

b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under Federal, State or County law, and all

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. NONDISCRIMINATION. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable Federal, State, or County law.

5. CONFLICTS OF INTEREST. The CONTRACTOR represents that neither the CONTRACTOR, nor any employees or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR's performance under this Contract.

6. SUBCONTRACTS AND ASSIGNMENTS; CHANGE OF NAME.

a. No assignment without consent. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (1) the CONTRACTOR obtains the prior written consent of the COUNTY and (2) the CONTRACTOR'S assignee or subcontractor submits to the COUNTY a tax clearance certificate from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued under State law against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the COUNTY.

b. Recognition of a successor in interest. When in the best interests of the COUNTY, a successor in interest may be recognized in an assignment agreement in which the COUNTY, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- 1) The Assignee assumes all of the CONTRACTOR'S obligations;
- 2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the COUNTY; and
- 3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

c. Change of name. When the CONTRACTOR asks to change the name under which it holds this Contract with the COUNTY, the contract officer of the purchasing agency shall, upon receipt of a document acceptable or satisfactory to said officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms or conditions of this Contract are thereby changed.

d. Reports. All assignment contracts and amendments to this Contract effecting changes of CONTRACTOR's name or novations hereunder shall be reported to the chief procurement officer as defined in section 103D-203(b), HRS, within 30 days of the date that the assignment contract or amendment becomes effective.

e. Actions affecting more than one purchasing agency. Notwithstanding the provisions of Subparagraphs b. through d. herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the COUNTY, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the County Department of Finance

7. INDEMNIFICATION AND DEFENSE. Except as provided for in Section 103D-713, HRS, the CONTRACTOR shall defend, indemnify and hold harmless the COUNTY, the contracting department and their directors, employees and agents from and against all liability, loss, damage, cost and expense, including all attorneys' fees and costs, and all claims, suits and demands therefor, arising out of or in connection with any acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents or subcontractors under this Contract. The provisions of this Paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract for any reason.

8. COST OF LITIGATION. In case the COUNTY shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay any cost and expense incurred by or imposed on the COUNTY, including attorneys' fees.

9. LIQUIDATED DAMAGES. When the CONTRACTOR is given notice of delay or nonperformance as specified in Paragraph 13 (Termination by Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the COUNTY the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the COUNTY reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR's delay or nonperformance is excused under

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

Subparagraph 13.d. (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR shall remain liable for damages caused other than by delay. This Paragraph is of no force and effect unless the amount of liquidated damages is specified in the Contract.

10. COUNTY'S RIGHT OF OFFSET. The COUNTY may offset against any monies or other obligations the COUNTY owes to the CONTRACTOR under this Contract, any amounts owed to the COUNTY by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the COUNTY by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The COUNTY will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this Paragraph, amounts owed to the COUNTY shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the COUNTY, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the COUNTY under such payment or other settlement plan.

11. DISPUTES. Disputes shall be resolved in accordance with §103D-703, HRS and Chapter 3-126, HAR.

12. SUSPENSION OF AGREEMENT. The COUNTY reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.

a. Order to stop performance. The head of the purchasing agency may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified period of time not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the head of the purchasing agency shall either:

- 1) Cancel the stop performance order; or
- 2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.

b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery or performance schedule or compensation, or both, and the Contract shall be modified in writing accordingly, if:

- 1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract and
- 2) The CONTRACTOR asserts a claim for such adjustment within thirty (30) days after the end of the period of performance stoppage provided that if the head of the purchasing agency decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.

c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.

d. Adjustment of price. Any adjustment in contract price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of this Contract.

13. TERMINATION FOR DEFAULT.

a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, or otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the head of the purchasing agency may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the head of the purchasing agency, the head of the purchasing agency 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 failure to properly perform. In the event of termination in whole or in part the head of the purchasing agency may procure similar goods or services in a manner and upon the terms deemed appropriate by the head of the purchasing agency. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods and services.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

b. **CONTRACTOR'S duties.** Notwithstanding termination of the Contract and subject to any directions from the head of the purchasing agency, the CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest.

c. **Compensation.** Payment for completed goods and services delivered and accepted by the COUNTY shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the head of the purchasing agency. If the parties fail to agree, the head of the purchasing agency shall set the amount subject to the CONTRACTOR's rights under chapter 3-126, HAR. The COUNTY may withhold from amounts due the CONTRACTOR such sums as the head of the purchasing agency deems to be necessary to protect the COUNTY against loss because of outstanding liens or claims of former lien holders and to reimburse the COUNTY for the excess costs incurred by the COUNTY in procuring similar goods and services.

d. **Excuse for nonperformance or delayed performance.** Except with respect to defaults of subcontractors, the CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, if the CONTRACTOR has notified the head of the purchasing agency within fifteen (15) days after the cause of the delay and the failure arises out of causes including acts of God; acts of the public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the head of the purchasing agency shall ascertain the facts and extent of the failure, and, if he or she determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule or the time of performance shall be revised accordingly, subject to the rights of the COUNTY under the clause entitled, in fixed-price contracts, "Termination for Convenience," and in cost-reimbursement contracts, "Termination." As used in this Paragraph the term "subcontractor" means subcontractor at any tier.

e. **Erroneous termination for default.** If, after notice of termination of the CONTRACTOR's right to proceed under this Paragraph, it is determined for any reason that the CONTRACTOR was not in default under this Paragraph, or that the delay was excusable under the provisions of Subparagraph d., "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Paragraph 14.

f. **Additional rights and remedies.** The rights and remedies provided in this Paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. TERMINATION FOR CONVENIENCE BY THE COUNTY.

a. **Termination for convenience.** The head of the purchasing agency may, when the interests of the COUNTY so require, terminate this Contract in whole or in part, for the convenience of the COUNTY. The head of the purchasing agency shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when such termination becomes effective.

b. **CONTRACTOR'S obligations.** The CONTRACTOR shall incur no further obligations in connection with the terminated performance, and on the date(s) set in the notice of termination the CONTRACTOR shall stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the County's approval. The head of the purchasing agency may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the COUNTY. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as are necessary to do so.

c. **Right to goods and work product.** The head of the purchasing agency may require the CONTRACTOR to transfer title and deliver to the COUNTY in the manner and to the extent directed by the head of the purchasing agency:

- 1) Any completed goods or work product or both; and
- 2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract. The CONTRACTOR shall, upon direction of the head of the purchasing agency, protect and preserve property in the possession of the CONTRACTOR in which the COUNTY has an interest. If the head of the purchasing agency does not exercise this right, the CONTRACTOR shall use CONTRACTOR'S best efforts to sell such goods and manufacturing materials. Use of this Paragraph in no way implies that the COUNTY has breached the Contract by exercise of the termination for convenience provision.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

d. Compensation.

1) The CONTRACTOR 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 subchapter 15, chapter 3-122 of the HAR, bearing on the claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the head of the purchasing agency may pay the CONTRACTOR, if at all, an amount set in accordance with d.(3) of this Paragraph.

2) The head of the purchasing agency and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted to the extent required by subchapter 15, chapter 3-122 of the HAR, and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the COUNTY, the proceeds of any sales of goods and manufacturing materials under Subparagraph c. of this Paragraph, and the Contract price of the performance not terminated.

3) Absent complete agreement under Subparagraph d.2) above, the head of the purchasing agency shall pay the CONTRACTOR the following amounts, provided payments agreed to under Subparagraph d.2) shall not duplicate payments under this Subparagraph for the following:

(A) Contract prices for goods or services or both accepted under the Contract;

(B) Costs incurred in preparing to perform and performing the terminated portion of the work or performance plus a five per cent markup on actual direct costs on the portion of the work or performance, the markup shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services or both; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have completed, no markup shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(C) Subject to the prior approval of the head of the purchasing agency, costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph b. Subcontractors shall be entitled to a markup of no more than ten per cent on direct costs incurred to the date of termination. These costs must not include costs paid in accordance with Subparagraph d.3)(B).

(D) The total sum to be paid the CONTRACTOR under this Subparagraph shall not exceed the total Contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph c.3) and the Contract price of performance not terminated.

4) Costs claimed, agreed to, or established under Subparagraphs d.2) and d.3) above shall be in accordance with Chapter 3-123, HAR.

15. CLAIMS BASED ON THE HEAD OF THE PURCHASING AGENCY'S ACTIONS OR OMISSIONS.

a. Change in scope. If any action or omission on the part of the head of the purchasing agency (which term includes the designee of such person) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of proper officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages or extension of time for completion, provided:

1) The CONTRACTOR shall have given written notice to the head of the purchasing agency:

(A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;

(B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance or

(C) Within such further time as may be allowed by the head of the purchasing agency in writing.

2) This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages or an extension of time. The head of the purchasing agency or his or her designee, upon receipt of such a notice, may rescind such action, remedy such omission or take such other steps as may be deemed advisable in the discretion of the head of the purchasing agency or his or her designee.

3) The notice required by Subparagraph a.1) of this Paragraph must describe as clearly as practicable, at the time, the reasons why the CONTRACTOR believes that additional compensation, damages or an extension of time may be remedies to which the CONTRACTOR is entitled; and

4) The CONTRACTOR must maintain and, upon request, make available to the head of the purchasing agency within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the COUNTY, of the claimed additional costs or an extension of time in connection with such changes.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

b. Nothing herein contained, however shall excuse the CONTRACTOR from compliance with any rules or laws precluding any County officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.

c. Any adjustment in the price made pursuant to this Paragraph shall be determined in accordance with the price adjustment provisions of the Contract and these General Conditions.

16. COST AND EXPENSES. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

a. Reimbursement for air transportation shall be for actual cost or coach class airfare, whichever is less.

b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.

c. Unless prior written approval of the head of the purchasing agency is obtained, reimbursement for subsistence allowable allowance (i.e., hotel and meals) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel for County officers and employees in the executive branch who are excluded from collective bargaining coverage. No other travel or living expense (e.g., tips, entertainment, alcohol, etc.) shall be reimbursed by the COUNTY, other than those items listed in Subparagraphs a. and b. of this Paragraph. Invoices shall document the days of travel by including the name of the traveler, itinerary, airfare receipt, hotel receipt, and ground transportation receipts. All travel must be pre-approved by the COUNTY Officer-in-Charge.

d. CONTRACTORS with an office located on the same island as the site of the services to be provided pursuant to this Contract are not entitled to per diem or transportation expense reimbursement unless expressly specified in the Contract.

17. PAYMENT PROCEDURES; FINAL PAYMENT; TAX CLEARANCE.

a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.

b. Subject to available funds. Such payments are subject to availability of funds, and all payments shall be made in accordance with and subject to Article 9 of the County of Maui Charter.

c. Payment only for work under contract. The COUNTY is not responsible to pay for work performed by CONTRACTOR or its subcontractors that is not in this Contract and any amendments or change orders thereto. CONTRACTOR must follow Paragraph 19, Contract Modifications, or Paragraph 20, Change Orders, and must have proper authorization before performing work outside the original Contract.

d. Compensation Retained.

1) Pursuant to §103-32.1(a), HRS, the County may retain a portion of the amount due under the contract to the Contractor to ensure proper performance of the contract, provided that the sum withheld shall not exceed five percent (5%) of the amount due the Contractor and that after fifty percent (50%) of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the Procurement Officer may continue to withhold as compensation retained sums not exceeding five percent (5%) of the amount due the Contractor; provided further that the compensation retained shall not include sums deducted and withheld separately as liquidated damages from moneys due or that may become due the Contractor under the contract.

2) The County may enter into an agreement with the Contractor which will allow the Contractor to withdraw from time to time the whole or any portion of the sum retained under sub-paragraph (a) upon depositing with the County any general obligation bond of the State or its political subdivisions with a market value not less than the sum to be withdrawn; provided that the County may require that the total market value of such bond be greater than the sum to be withdrawn.

e. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. FEDERAL OR STATE FUNDS. If this Contract is payable in whole or in part from federal or state of Hawaii ("State") funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal or State funds, the CONTRACTOR shall be paid only from such funds received from the federal or State government, and shall not be paid from any other funds. Failure of the County to receive anticipated federal or State funds shall not be considered a breach by the County or an excuse for nonperformance by the CONTRACTOR.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

19. CONTRACT MODIFICATIONS.

a. Modification in writing; no verbal modification. At any time, and without notice to any surety, the head of the purchasing agency, subject to mutual agreement of the parties to the Contract in writing and all appropriate adjustments, may make modifications within the general scope of this Contract to include any one or more of the following:

- 1) Drawings, designs, or specifications, for the goods to be furnished or services to be performed;
- 2) Method of shipment or packing;
- 3) Place of delivery;
- 4) Description of services to be performed;
- 5) Time of performance (i. e., hours of the day, days of the week, etc.);
- 6) Place of performance of the services; or
- 7) Other provisions of the contract accomplished by mutual action of the parties to the contract.

b. No verbal modification. No verbal modification, alteration, amendment, change or extension of any term, provision or condition of this Contract shall be permitted or acknowledged.

c. Adjustment of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.

d. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

e. Other claims not barred. In the absence of a written modification to the Contract, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.

f. Professional Services Contract. If this is a professional services contract awarded pursuant to Section 103D-304, HRS, any modification, alteration, amendment, change or extension of any term, provision or extension of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial Contract price must receive the prior approval of the County Director of Finance.

g. Tax clearance. The COUNTY may, at its discretion, require the CONTRACTOR to submit to the COUNTY, prior to the COUNTY'S approval of any modification, alteration, amendment, change or extension of any term, provision or condition of the Contract, a tax clearance from the Director of Taxation, State of Hawaii, showing that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid.

h. Sole source agreements. Amendments to sole source agreements that would change the original scope of the agreement, or increase the original contract price by ten percent or more, may only be made with the approval of the Chief Procurement Officer. Annual renewal of a sole source agreement for services shall not be submitted as an amendment.

20. CHANGE ORDERS. A change order is a written order signed by the head of the purchasing agency, directing the CONTRACTOR to make changes which the "changes clause" described below authorizes the head of the purchasing agency to order without the consent of the CONTRACTOR.

a. Changes Clause Generally. By written order, at any time, and without notice to any surety, the head of the purchasing agency may, unilaterally, order of the CONTRACTOR:

- 1) Changes in the work within the scope of the Contract; and
- 2) Changes in the time of performance of the Contract that do not alter the scope of the contract work.

b. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment in contract price shall be resolved in accordance with Subparagraph a.5) of Paragraph 21 on Price Adjustment. Failure of the parties to agree to an adjustment in time shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the head of the purchasing agency, within fourteen days after the changed work commences, makes the provisional adjustments in time as the head of the purchasing agency deems reasonable. The right of the CONTRACTOR to dispute the contract price or time required for performance or both shall not be waived by its performing the work, provided however, that it follows the written notice requirements for disputes and claims established by the Contract.

c. Time period for claim. Except as may be provided otherwise by section 103D-501(b), HRS, the CONTRACTOR must file a written claim disputing the contract price or time provided in a change order within ten

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

days after receipt of a written change order, unless such period for filing is extended by the head of the purchasing agency in writing. The requirement for filing a timely written claim cannot be waived and shall be a condition precedent to the assertion of a claim.

1) Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if the claim is not received by the head of the purchasing agency prior to final payment under this Contract.

2) Other claims not barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. PRICE ADJUSTMENT.

a. Price adjustment. Any adjustment in the Contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:

1) By agreement on a fixed price adjustment before commencement of the pertinent performance;

2) By unit prices specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

3) By the costs attributable to the events or situations covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon before commencement of the pertinent performance;

4) In such other manner as the parties may mutually agree upon before commencement of the pertinent performance; or

5) In the absence of agreement between the parties, the adjustment shall be made pursuant to 103D-501(b)(5), HRS.

b. Submission of cost or pricing data. The CONTRACTOR shall be required to submit cost or pricing data for any price adjustment subject to the provisions of subchapter 15, chapter 3-122, HAR. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in Subparagraph (a)(1) through (a)(4) of this Paragraph shall be issued within ten days after agreement on the method of adjustment.

22. VARIATIONS IN QUANTITY FOR ANY DEFINITE QUANTITY CONTRACT. If this is a definite quantity goods or services contract, upon the agreement of the COUNTY and the CONTRACTOR, the quantity of goods or services, or both, specified in this Contract, may be increased by a maximum of ten per cent (10%), provided (1) the unit prices will remain the same except for any price adjustments otherwise applicable; and (2) the head of the purchasing agency makes a written determination that such an increase will either be more economical than awarding another Contract or that it would not be practical to award another agreement.

23. CHANGES IN COST-REIMBURSEMENT CONTRACT. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

a. The head of the purchasing agency may at any time by written order, and without notice to the sureties, in any, make changes within the general scope of the Contract in any one or more of the following:

1) Description of performance;

2) Time of performance (i.e., hours of the day, days of the week, etc.)

3) Place of performance of services;

4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the COUNTY in accordance with the drawings, designs, or specifications;

5) Method of shipment or packing of supplies; or

6) Place of delivery.

b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the head of the purchasing agency shall make an equitable adjustment in the 1) estimated cost, deliver or completion schedule, or both; 2) amount of any fixed fee; and 3) other affected terms and shall modify the Contract accordingly.

c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within 30 days from the day of receipt of the written order. However, if the head of the purchasing agency decides that the facts justify it, the head of the purchasing agency may receive and act upon a proposal submitted before final payment under the Contract.

d. Failure to agree to any adjustment shall be a dispute under the provision on Dispute herein. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.

e. Notwithstanding the terms and conditions of Subparagraphs a. and b. of this Paragraph, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

Contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.

24. PROMPT PAYMENT OF SUBCONTRACTORS.

a. Generally. Any money paid to a CONTRACTOR shall be disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement agency has withheld payment.

b. Final payment. Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

c. Penalty. The procurement officer or the CONTRACTOR, as applicable, will be subject to a penalty of one and one-half per cent per month upon outstanding amounts due that were not timely paid by the responsible party under the following conditions. Where a subcontractor has provided evidence to the CONTRACTOR of satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in Subparagraph d. of this Paragraph, and:

1) Has provided to the CONTRACTOR an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State, as provided in section 103-32.1, HRS; or

2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to CONTRACTOR and the surety, as provided for in section 103D-324, HRS; and

(B) The subcontractor has provided to the CONTRACTOR, an acceptable release of retainage bond, executed by a surety company authorized to do business in the State, in an amount of not more than two times the amount being retained or withheld by the CONTRACTOR; any other bond acceptable to the CONTRACTOR; or any other form of mutually acceptable collateral, then, all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the CONTRACTOR and subsequently, upon receipt from the procurement officer, by the CONTRACTOR to the subcontractor within the applicable time periods specified in Subparagraph b. of this Paragraph and section 103-10, HRS. The penalty may be withheld from future payment due to the CONTRACTOR, if the CONTRACTOR was the responsible party. If a CONTRACTOR has violated Subparagraph b. three or more times within two years of the first violation, the Contractor shall be referred by the procurement officer to the contractor's license board for appropriate action, including action under section 444-17(14), HRS.

d. A properly documented final payment request from a subcontractor, as required by Subparagraph c., shall include:

1) Substantiation of the amounts requested;

2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amount that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the CONTRACTOR within seven days after receipt, with a statement identifying the defect.

e. This section shall not be construed to impair the right of a CONTRACTOR or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under Subparagraph c. of this Paragraph; provided that any such payments withheld shall be withheld by the procurement officer.

25. ACCEPTANCE OF GOODS AND SERVICES. The COUNTY shall accept goods and services or give CONTRACTOR notice of rejection within a reasonable time, notwithstanding any payment, prior test, or inspection. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance with

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

the specifications, shall relieve CONTRACTOR of any obligations under this Contract or impair any rights or remedies of the COUNTY.

26. OBSOLETE PARTS/LONG TERM PARTS AVAILABILITY. Contractor shall timely report on the status of end of life (EOL) hardware that has been procured for the purchased or leased product. EOL hardware includes the following: electronic components/piece parts and mechanical hardware. Contractor shall provide advanced notification in writing to the Officer-in-Charge of any changes to tooling, facilities, materials, availability of parts, or processes that could affect the contracted product. This includes but is not limited to fabrication, assembly, handling, inspection, acceptance, testing, facility relocation, or introduction of a new manufacturer. Contractor shall notify the COUNTY of any pending or contemplated future action to discontinue articles purchased or replacement parts for the articles purchased pursuant to this Contract and shall work with the COUNTY to determine the need to stockpile any parts for the likely life of the product and offer those parts to the COUNTY prior to the actual discontinuance. Contractor shall extend opportunities to the COUNTY to place last time buys of such articles with deliveries not to exceed twelve months after the last time buy date.

27. CONFIDENTIALITY OF MATERIAL.

a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the COUNTY.

b. All information, data, or other material provided by the CONTRACTOR to the COUNTY is subject to the Uniform Information Practices Act, chapter 92F, HRS.

28. PUBLICITY. The CONTRACTOR shall not refer to the COUNTY or any office, agency, or Officer thereof, or any COUNTY employee, including the head of the purchasing agency, the County procurement officers, the COUNTY council members, or members or directors of any County Board, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR without the explicit written consent of the COUNTY. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the head of the purchasing agency.

29. OWNERSHIP RIGHTS AND COPYRIGHT. The COUNTY shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract and all such material shall be considered "works for hire." All such materials shall be delivered to the COUNTY upon expiration or termination of this Contract. The COUNTY, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled or conceived by the CONTRACTOR pursuant to this Contract.

30. INSURANCE. During the term of this Contract, CONTRACTOR shall maintain at all times or cause to be maintained general and professional liability insurance coverage for CONTRACTOR and its employees rendering services to the COUNTY under this Contract. The insurance policies shall be issued by a company or companies authorized to do business in Hawaii and approved by the COUNTY, with combined single limits of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence and TWO MILLION DOLLARS (\$2,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,000 or less, and THREE MILLION DOLLARS (\$3,000,000) in the aggregate for Contracts with a total certified amount of \$1,000,001 or more, or such greater amount as may be required from time to time by the COUNTY. CONTRACTOR shall also carry workers' compensation insurance for CONTRACTOR'S employees in the amounts required by applicable law. CONTRACTOR shall provide COUNTY not less than thirty (30) days' notice prior to any cancellation or material change or reduction in coverage. No such material change or reduction may be made without approval from the COUNTY. The COUNTY shall be listed as an additional insured on all policies, with the exception of professional liability and workers' compensation policies. Prior to the commencement of this Contract, CONTRACTOR shall provide the COUNTY with a certificate of insurance. Thereafter, prior to the expiration of each policy period, the insurance carriers for CONTRACTOR shall provide the COUNTY with certificates of insurance evidencing the foregoing coverage and provisions. The COUNTY reserves the right to request and receive a certified copy of the policies. Failure to maintain the necessary insurance in accordance with the provisions set forth herein shall constitute a material breach of this Contract and the COUNTY shall thereafter have the options of pursuing remedies for such breach and/or immediate termination of this Contract.

31. LIENS AND WARRANTIES.

a. Liens. All products provided under this Contract shall be free of all liens and encumbrances.

b. Warranties for products and services. In the event this Contract is for the provision of products (goods or equipment), CONTRACTOR warrants that it has all rights, title and interest in and to all products sold, leased or licensed to the COUNTY. CONTRACTOR also warrants that the products shall substantially conform to all descriptions, specifications, statements of work and representations set forth in the Contract, schedules, publications

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

of CONTRACTOR and/or any order(s) and will be free from defects in materials, performance, workmanship and design. CONTRACTOR further warrants that it will perform any services required with promptness, diligence and in accordance with prevailing standards in the industry to the reasonable satisfaction of the COUNTY. The Warranty period shall commence after Acceptance, as defined in this Contract. Any specific warranty periods shall be as set forth in the proposals, schedules, orders or Special Conditions pertaining to this Contract but in any event such warranty period shall not be less than one (1) year.

32. AUDIT OF BOOKS AND RECORDS OF THE CONTRACTOR. The COUNTY may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:

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

33. COST OR PRICING DATA.

a. Cost or pricing data must be submitted to the head of the purchasing agency and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the head of the purchasing agency.

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

34. AUDIT OF COST OR PRICING DATA. When cost or pricing principles are applicable, the County may require an audit of cost or pricing data.

35. RECORDS RETENTION.

a. Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the COUNTY.

b. The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the COUNTY, and any cost or pricing data, for at least three years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three year or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS, or returned to the County at the request of the County.

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

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

38. POLLUTION CONTROL. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the COUNTY and all other appropriate state, county, or federal agencies as required by law. The CONTRACTOR shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the COUNTY determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.

39. CONFIDENTIALITY OF PERSONAL INFORMATION.

a. Definitions.

"Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:

- 1) Social security number;
- 2) Driver's license number or Hawaii identification card number; or
- 3) Account number, credit or debit card number, access code, or password that would permit

access to an individual's financial information.

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

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

b. Confidentiality of Material.

1) All material given to or made available to the CONTRACTOR by the COUNTY by virtue of this Contract which is identified as personal information shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the COUNTY.

2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.

3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the COUNTY to reduce the risk of unauthorized access to personal information.

4) CONTRACTOR shall report to the COUNTY in a prompt and complete manner any security breaches involving personal information.

5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this Paragraph.

6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the COUNTY, or personal information created or received by CONTRACTOR on behalf of the COUNTY.

c. Security awareness training and confidentiality agreements.

1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.

2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:

(A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;

(B) Access to the personal information will be allowed only as necessary to perform the Contract; and

(C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

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

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

40. GOVERNING LAW. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a State court of competent jurisdiction in Wailuku, Maui, Hawaii.

41. COMPLIANCE WITH LAWS. The CONTRACTOR shall comply with all federal, State, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract. This specifically includes, without limitation, Sections 103-55 and 103-55.5, HRS, dealing with wages, hours and working conditions of employees of contractors providing services or construction.

CONTRACT NO. C6480

CONTRACT FOR GOODS & SERVICES

- 42. CONFLICT BETWEEN GENERAL CONDITIONS AND PROCUREMENT RULES.** In the event of a conflict between the General Conditions and the procurement rules in the HAR, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
- 43. ELECTION-RELATED CONTRIBUTIONS BY COUNTY CONTRACTORS.** CONTRACTOR acknowledges and shall comply with Section 11-355, HRS.
- 44. DRAFTING.** No provision of this Contract shall be interpreted for or against any party on the basis that such party was the draftsman of such provision, and no presumption of burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Contract.
- 45. CAPTIONS.** The captions contained herein are used solely for convenience and shall not be deemed to define or limit the provisions of this Agreement.
- 46. COUNTERPARTS.** This Contract may be executed in any number of counterparts with the same effect as if all of the parties had signed the same document. Such executions may be transmitted to the parties by facsimile or electronically and such facsimile or electronic execution and transmission shall have the full force and effect of an original signature. All fully executed counterparts, whether original executions or facsimile or electronic executions or a combination thereof shall be construed together and shall constitute one and the same Contract.
- 47. SEVERABILITY.** In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or non-enforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
- 48. WAIVER.** The failure of the COUNTY to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the COUNTY's right to enforce the same in accordance with this Contract. The fact that the COUNTY specifically refers to one provision of the law, and does not include other provisions shall not constitute a waiver or relinquishment of the COUNTY's rights or the CONTRACTOR's obligations under the law.
- 49. ENTIRE AGREEMENT.** This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the COUNTY and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the COUNTY and the CONTRACTOR other than as set forth or as referred to herein.

[END OF GENERAL CONDITIONS FOR GOODS & SERVICES CONTRACTS]

EXHIBIT 1

FIRST HAWAIIAN LEASING, INC.

P.O. BOX 1240

HONOLULU, HAWAII 96807

TELEPHONE (808) 943-4905

MASTER LEASE AGREEMENT NO. _____

LESSEE: COUNTY OF MAUI

1. MASTER LEASE AGREEMENT. First Hawaiian Leasing, Inc. (the "Lessor") hereby agrees to lease to the above-described Lessee, and the Lessee agrees to lease from the Lessor, all machinery, equipment and other personal property ("Equipment") described in the lease schedules ("Lease Schedules") executed concurrently herewith, or which may from time to time hereafter be executed by the Lessor and the Lessee and attached hereto and incorporated by reference, upon the terms and conditions set forth in this Master Lease Agreement and the Lease Schedules. As used herein, the term "this Lease" includes this Master Lease Agreement, all Lease Schedules and any addenda executed by the parties with respect to certain Equipment leased hereunder. The terms of this Master Lease Agreement are generally intended to apply to all Equipment leased hereunder, but certain modifications may be made with respect to certain Equipment as set forth in the Lease Schedule and any addenda executed by the parties with respect thereto. Unless the Lessor has made an election to separate this Lease pursuant to Paragraph 20 below, this Lease shall constitute one undivided lease of the Equipment. All of the terms, covenants and conditions of this Lease shall govern the rights and obligations of the Lessor and the Lessee, except as specifically modified in writing.

2. LEASE TERM. This Lease shall become effective on the date of execution specified at the end of this Master Lease Agreement. The "Lease Term" shall commence on the effective date of this Lease and shall terminate upon the full performance and satisfaction of all of the terms, covenants and conditions set forth in this Lease; as such, the Lease Term includes any "Interim Rental" period and the aggregate "Rental Term" specified in all of the Lease Schedules that are made a part of this Lease. The Rental Term for each item of Equipment is provided in the Lease Schedule. Once the Rental Term has commenced, the Lessee shall have no right to terminate the lease of the Equipment described in the Lease Schedule prior to the expiration of such Rental Term.

3. RENT. The Lessee shall pay the Lessor the amount of rent set forth in the Lease Schedules on the dates specified therein; provided, however, if the actual Capitalized Cost of the Equipment differs from the amount set forth in the Lease Schedules, the Lessor may adjust the amount of rent based on the amount of any such difference. The method of adjusting the rent is set forth in the Lease Schedules. As used in this Lease, the term "actual Capitalized Cost" means the cost to the Lessor of purchasing, delivering and, to the extent approved by the Lessor, the costs of installing and making the Equipment available for use. Interim Rental shall be paid by the Lessee to the Lessor as provided in the Lease Schedules. All rental payments shall be paid at the office of the Lessor or such other place as the Lessor may hereafter specify in writing to the Lessee. If the Lessor's interest in this Lease is assigned to a third party, all rental payments shall be paid at the office of the assignee or such place as the assignee may hereafter specify in writing to the Lessee. The Lessee shall pay all rent to the Lessor or the Lessor's assignee without deduction, set-off or demand, and the amount of such rent shall not be reduced in amount during any period in which the Equipment is being serviced or repaired. In addition to the rental payments, the Lessee shall pay such other sums as are specified in this Lease.

4. GENERAL EXCISE TAX AND GROSS INCOME TAXES. The Lessee shall pay to the Lessor, as additional rent, an amount equal to the gross income taxes payable by the Lessor under the Hawaii general excise tax law, or any similar state, federal or county law which may be hereafter enacted, on account of any rental income, purchase option price or other sums actually received or constructively received by the Lessor from the Lessee pursuant to this Lease. These gross income taxes shall be due at

the time the rental income and other sums subject to gross income taxes are received by the Lessor. While the Lessor is presently not liable for the payment of any gross income taxes on the payments due under this Lease, the Lessor, on behalf of itself and any subsequent owners of the Lessor's interest under this Lease, reserves the right to collect the gross income taxes described herein as a result of any future change in law or change in circumstances affecting the ownership of the Lessor's interest under this Lease.

5. LATE CHARGES, INTEREST ON PAST DUE AMOUNTS AND HANDLING CHARGES.

(a) If the Lessee shall fail to pay any monthly rental payment or other sum required to be paid to the Lessor under this Lease, within ten (10) days of the due date, the Lessee may assess a one-time late charge as described in the Lease Schedules. If more than one late charge is specified in the Lease Schedules, (1) the late charge specified in the Lease Schedule shall apply to the rental payments covered thereby, and (2) the late charge specified in the most recently executed Lease Schedule that is still in effect shall apply to all other sums required to be paid to the Lessor under this Lease.

(b) If the Lessee shall fail to pay any monthly rental payment or other sum required to be paid to the Lessor under this Lease within thirty (30) days the due date, Lessor may, but shall not be obligated to, charge interest on the delinquent payment at the interest rate specified in the Lease Schedules. If more than one interest rate is specified in the Lease Schedules, (1) the interest rate specified in the Lease Schedule shall apply to the monthly rental payments covered thereby, and (b) the highest rate specified in the Lease Schedules shall apply to all other sums required to be paid to the Lessor under this Lease. In the case of a default by the Lessee and the Lessor shall elect to require the Lessee to pay the Stipulated Loss Value of the Equipment as part of the Lessor's damages pursuant to Paragraph 23(a) below, the interest rate specified in each Lease Schedule shall apply to the Stipulated Loss Value covered by such Lease Schedule, and the interest shall be computed from the date the amount of the Stipulated Loss Value is due until such amount is paid in full. However, in no event shall any interest be assessed on any late charges or any future interest component or payment that may be included in the Stipulated Loss Value covered by any Lease Schedule.

(c) In addition, the Lessee shall pay, as a handling charge, the amount specified in the Lease Schedules for returned checks written against insufficient funds. If different handling charges are specified in the Lease Schedules, the handling charge specified in the most recently executed Lease Schedule that is still in effect shall be the applicable handling charge for any returned checks written against insufficient funds.

6. REGISTRATION, LICENSE, EXPENSES, FEES AND TAXES ON EQUIPMENT.

(a) The Lessee shall pay all expenses incurred in the use, maintenance and operation of the Equipment, including, without limitation, all registration and license fees, fuel costs, repair and maintenance expenses, towing charges, fines and penalties.

(b) In addition to the gross income taxes described in Paragraph 4 above, the Lessee shall pay all personal property and ad valorem taxes, sales and use taxes, assessments, duties and charges now or hereafter imposed by any federal, state or county taxing authority upon the Equipment or this Lease, whether the same shall be imposed on the Lessor or the Lessee and together with any penalties or interest assessed thereon for any late payment; provided, however, this Lessee covenant shall not apply to the payment of the Lessor's net income taxes arising from this Lease or to the payment or any penalties or interest directly attributable to any late payments made by the Lessor.

(c) The Lessee shall reimburse and hold the Lessor harmless for any and all amounts which the Lessor may pay in satisfaction, release or discharge of the Lessee's obligations under this Paragraph 6.

7. SELECTION, DELIVERY AND INSTALLATION COSTS OF EQUIPMENT.

(a) **SELECTION OF EQUIPMENT.** The Lessee hereby acknowledges: (i) that it has selected the type, quantity and method of delivery of the Equipment, and the manufacturer and/or dealer (sometimes hereafter called the "Vendor") of the equipment; (ii) that the Lessor has not selected and does not manufacture or supply the Equipment; (iii) that the Lessor has or will acquire the Equipment solely in connection with this Lease; (iv) that the Lessor has informed the Lessee in writing that the Lessee is entitled to the promises and warranties, including those of any third party, provided to the Lessor by the Vendor in connection with the contract by which the Lessor has or will acquire the Equipment, and the Lessee may communicate with the Vendor and receive a statement of those promises and warranties, including any disclaimers and limitations of them or of remedies; (v) that the Lessee has selected the Equipment solely in reliance on the manufacturer's and Vendor's warranties and representations; and (vi) that the Lessor has not made any representations to the Lessee concerning the use, condition, operation, efficiency or safety of the Equipment. The Lessee also acknowledges that the sales representatives or other agents of the Vendor are not the agents of the Lessor, and therefore, are not authorized to waive or alter any term, covenant or condition of this Lease.

(b) **DELIVERY OF EQUIPMENT.** The Lessor will order the Equipment from the Vendor selected by the Lessee for delivery to the Lessee (based on shipment terms determined by the Lessee) at the time and place set forth in each Lease Schedule. If the Vendor fails to meet the Outside Delivery Date set forth in the Lease Schedule, either the Lessor or the Lessee may, at its option, terminate the Lease Schedule by giving the other party written notice thereof within ten (10) days after the expiration of the Outside Delivery Date; provided, however, the termination of the Lease Schedule shall not relieve the Lessee of its obligation to pay any accrued but unpaid carrying charges owed to the Lessor pursuant to the Lease Schedule or other recourse agreement executed by the Lessee for any advances paid to the Vendor.

(c) **DELIVERY AND INSTALLATION COSTS.** The Lessee shall pay all transportation costs, sales, excise or use taxes, and handling and installation charges for the Equipment; provided, however, if any such charges are advanced or approved by the Lessor, then these charges may be added to the Capitalized Cost of the Equipment.

8. INSPECTION AND ACCEPTANCE OF EQUIPMENT; REJECTION.

(a) The Lessee shall make, at its own expense, all necessary inspections and tests of the Equipment to determine whether the Equipment conforms to the Lessee's requirements and specifications within the Inspection Period specified in the Lease Schedule.

(b) Upon the completion of its inspection of the Equipment, the Lessee shall promptly deliver to the Lessor an executed acceptance certificate (the "Acceptance Certificate") or reject the Equipment pursuant to Paragraph 8(c) below.

THE LESSEE SHALL NOT PUT THE EQUIPMENT TO ITS INTENDED USE, OTHER THAN FOR INSPECTION AND TESTING PURPOSES, PRIOR TO THE EXECUTION AND DELIVERY OF THE ACCEPTANCE CERTIFICATE. IF THE LESSEE FAILS TO DELIVER THE ACCEPTANCE CERTIFICATE OR REJECT THE EQUIPMENT PRIOR TO THE EXPIRATION OF THE INSPECTION PERIOD PROVIDED IN THE LEASE SCHEDULE, THE LESSOR MAY TERMINATE ITS COMMITMENT TO LEASE THE EQUIPMENT TO THE LESSEE PURSUANT TO THIS LEASE. IN ADDITION, THE LESSOR SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO CONSIDER THE LESSEE'S FAILURE TO DELIVER THE ACCEPTANCE CERTIFICATE AS CONCLUSIVE EVIDENCE THAT THE EQUIPMENT WAS DELIVERED TO THE LESSEE IN GOOD CONDITION AND THAT IT HAS BEEN ACCEPTED BY THE LESSEE. THE LESSEE'S ACCEPTANCE OF THE EQUIPMENT PURSUANT TO THIS PARAGRAPH 8(b) SHALL BE FOR THE SOLE PURPOSE OF COMMENCING THE LESSEE'S RENTAL PAYMENT AND OTHER OBLIGATIONS TO THE LESSOR UNDER THIS LEASE. ACCORDINGLY, THE

LESSEE'S ACCEPTANCE OF THE EQUIPMENT SHALL BE SOLELY FOR THE BENEFIT OF THE LESSOR, AND SHALL BE WITHOUT PREJUDICE TO THE LESSEE'S RIGHTS AGAINST THE MANUFACTURER OR VENDOR OF THE EQUIPMENT FOR REMEDYING ANY CLAIMED DEFECTS.

(c) The Lessee may reject the Equipment if such rejection is permitted under the Hawaii Uniform Commercial Code or any other applicable law governing the sale of goods. If the Lessee elects to reject the Equipment, the Lessee agrees (i) to promptly notify the Lessor and the Vendor in writing that the Equipment has been rejected and the reasons therefore; (ii) to cooperate with the Lessor in complying with, at the Lessee's own expense, all applicable laws dealing with the obligations of a purchaser in rejecting the Equipment, (iii) to follow any reasonable instructions received from the Lessor or the Vendor with respect to the Equipment, (iv) to hold the Equipment with reasonable care for a reasonable time after the Lessee's notification of rejection, and (v) to indemnify, defend and hold the Lessor harmless from and against all claims, damages, actions, costs and expenses (including attorneys' fees) and liabilities arising out of or connected with the Lessee's rejection of the Equipment.

9. WARRANTIES.

(a) **NO LESSOR'S WARRANTIES.** THE LESSOR, NOT BEING THE MANUFACTURER OR VENDOR OF THE EQUIPMENT OR THE AGENT THEREFOR, MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WHATSOEVER WITH RESPECT TO THE EQUIPMENT, INCLUDING BUT NOT LIMITED TO: ANY WARRANTY AGAINST INFRINGEMENT (INCLUDING ANY CLAIMS FOR PATENT INFRINGEMENT) BY ANY PERSON; THE MERCHANTABILITY OF THE EQUIPMENT OR ITS FITNESS FOR ANY PARTICULAR PURPOSE; THE DESIGN OR THE CONDITION OF THE EQUIPMENT; THE WORKMANSHIP OF THE EQUIPMENT; COMPLIANCE OF THE EQUIPMENT WITH THE REQUIREMENTS OF ANY LAW, RULE, SPECIFICATION OR CONTRACT PERTAINING THERETO; OR ANY DEFECTS WHATSOEVER; IT BEING UNDERSTOOD THAT THE EQUIPMENT IS BEING LEASED TO THE LESSEE "AS IS".

(b) **VENDOR'S WARRANTIES TO BE IN LIEU OF ALL OTHERS.** THE LESSEE HEREBY AGREES THAT THE MANUFACTURER'S AND VENDOR'S EQUIPMENT WARRANTIES SHALL BE IN LIEU OF ALL OTHERS, EXPRESSED OR IMPLIED, DURING THE TERM OF THIS LEASE, AND THAT THE LESSOR SHALL NOT BE LIABLE TO THE LESSEE FOR THE LOSS OF ANY PROFITS, LOSS OF WORKING TIME, INJURY TO ANY PERSON OR PROPERTY, LOSS OF BUSINESS OR ANY OTHER DAMAGES, DIRECT OR INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHERWISE CAUSED OR RESULTING FROM THE POSSESSION, USE AND LOSS OF USE OF THE EQUIPMENT. THE LESSEE SHALL MAKE ANY CLAIM ON ACCOUNT THEREOF SOLELY AGAINST THE VENDOR. The Lessor agrees to assign solely for the purpose of assisting the Lessee in the assertion of its claim, all of the Lessor's rights to any manufacturer or Vendor warranties on the Equipment. All claims or actions under any manufacturer or Vendor warranties shall be made by the Lessee, at its own expense, and the Lessor shall have no obligation to make any claim on any such warranty; provided, however, if to the extent that any breach of warranty results in damage or liability to the Lessor or the Lessor's interest in the Equipment, Lessor may, but shall not be under any obligation to, make or prosecute a claim or action in addition to or in lieu of any claim or action by the Lessee. Any proceeds recovered by the Lessee from any claims made against the manufacturer or the Vendor shall first be used to repair the affected Equipment.

(c) Once the Equipment has been accepted by the Lessee or presumed accepted by the Lessee pursuant to Paragraph 8 above, no defects or unfitness of the Equipment for use in the Lessee's business shall relieve the Lessee of, or shall be a defense to, the Lessee's performance of its obligations under this Lease, including, without limitation, the obligation to make the rental payments due to the Lessor.

(d) The foregoing provisions of Paragraph 7 above (relating to selection of the Equipment), Paragraph 8 above (relating to the Lessee's inspection and acceptance of the of the equipment), this Paragraph 9 (relating to the Lessor's disclaimer of warranties), and Paragraph 27 (relating to indemnification) reflect the parties' intention of structuring this Lease as a "finance lease" within the meaning of Hawaii Uniform Code Article 2A - Leases (as codified in Chapter 490 of the Hawaii Revised Statutes, as amended). These provisions are material to the determination of the amount of rent payable under this Lease, and, accordingly, shall be construed to affect this intention of the parties.

10. TITLE TO AND LOCATION OF EQUIPMENT; NO ATTACHMENT TO REALTY; NOTICE OF OWNERSHIP; ADVERTISEMENTS.

(a) Title to the Equipment shall remain with the Lessor at all times and the Lessee shall have no right, title or interest therein except as expressly set forth in this Lease.

(b) The Equipment shall at all times be and remain personal property even though the Equipment may now or hereafter be affixed to realty.

(c) The Equipment shall be delivered to the location specified in the appropriate Lease Schedule and shall not thereafter be removed from such location without the written consent of the Lessor.

(d) The Lessor shall be permitted to display notice of its ownership of the Equipment by affixing to the Equipment an identifying stencil or plate or any other indicia of ownership, and the Lessee shall not alter, deface, cover or remove such ownership identification.

(e) Notwithstanding any provision to the contrary, the Lessee may affix advertisements or insignia of the Lessee's design to the Equipment but the Lessee shall, upon the expiration of the Rental Term, restore the Equipment to its original condition prior to the installation thereof and remove all evidence of the same. All expenses for the installation and removal thereof shall be borne by the Lessee.

11. INSURANCE; NOTICE OF ACCIDENTS AND COOPERATION. The Lessee agrees to provide and maintain at its sole expense:

(a) A policy of commercial general liability insurance issued by a financially responsible and substantial insurer which (1) insures the Lessor, the Lessee and the Lessee's agents, servants and employees with respect to their liability for bodily injury and property damage resulting from or arising out of the operation of the Equipment, (2) names the Lessor as an additional insured, (3) provides products liability coverage (if requested by the Lessor) and (4) shall be in such amounts as are reasonably satisfactory to the Lessor.

(b) A policy of insurance issued by a financially responsible and substantial insurer which insures the Equipment against all hazards requested by the Lessor, including but not limited to, fire, lightning, explosion, smoke damage, theft, vandalism and malicious mischief, water damage, transportation hazards, and extended coverage. Such insurance shall name the Lessor and the Lessee as the loss payee as their interests may appear and shall be in such amounts as are reasonably satisfactory to the Lessor. All proceeds from such insurance shall be credited by the Lessor toward the Lessee's obligations under Paragraph 12 below, and the balance of the proceeds, if any, shall be the property of the Lessee.

All insurance shall be in force not only during the Rental Term of the Equipment, but from the date of execution of the Lease Schedule, or, if the Equipment is ordered from a Vendor, from the date risk of loss passes from the Vendor until the date the Equipment is returned to the Lessor at its place of business or other place designated by the Lessor for the return of the Equipment (or, in case the Equipment is lost or destroyed, until the Lessee's obligations are terminated pursuant to Paragraph 12 below). All insurance shall provide for a thirty-day prior written notice to the Lessor of any cancellation of insurance or change in coverage. The Lessee shall furnish the Lessor with a certificate or other

satisfactory evidence of the maintenance of all insurance required hereunder. Notwithstanding the foregoing, the Lessee shall have a continuing duty to inform the Lessor of the cancellation or change in coverage of any insurance required by this Lease.

The Lessee hereby irrevocably appoints the Lessor as its attorney-in-fact with full power to negotiate, prosecute, settle or compromise all claims or actions under or pursuant to such insurance policies and to execute in the name of the Lessee any proofs of claim or loss, and to endorse in the name of the Lessee on any settlement, draft or check. The Lessee shall cooperate in the prosecution of all claims.

The Lessee shall also provide and pay for any other insurance or bond that may be required by any governmental authority as a condition to, or in connection with, the Lessee's use of the Equipment.

If the Equipment is involved in any accident, damaged, stolen or destroyed, the Lessee shall report the same to the Lessor in writing within 24 hours, and the Lessee agrees that Lessee shall cooperate fully with the Lessor and any insurance carriers in the investigation and defense of any and all claims or suits arising from the Lessee's operation or use of the Equipment.

The Equipment shall not be used by any person, in any manner, or for any purpose that would cause any insurance required herein to be suspended, canceled, and rendered inapplicable or increased in cost.

The Lessee acknowledges that the Lessor has not conditioned this Lease upon the Lessee procuring the insurance required hereunder from any insurance company designated by the Lessor. This Lease constitutes written notice to the Lessee that the Lessee may procure the insurance required by this Lease from any insurance company authorized to do business in the State of Hawaii.

12. LOSS, DAMAGE TO OR DESTRUCTION OF EQUIPMENT.

(a) The Lessee shall bear the risk of any loss, damage to or destruction of the Equipment (collectively, the "Loss"), whether resulting from fire, theft, collision, governmental action or any cause whatsoever, and regardless of whether the Loss is covered by insurance or not, from the date of execution of the Lease Schedule (or if the Equipment is ordered from a Vendor, then from the date risk of loss passes from the Vendor) until the Equipment is returned to the Lessor upon the expiration of the Rental Term or earlier termination of this Lease.

(b) ANY LOSS OF THE EQUIPMENT SHALL NOT RELIEVE THE LESSEE OF ANY OBLIGATIONS UNDER THIS LEASE, INCLUDING ITS OBLIGATION TO PAY RENT, UNLESS AND UNTIL THE LESSEE'S OBLIGATIONS ARE TERMINATED BY THE LESSOR PURSUANT TO PARAGRAPH 12(d) BELOW.

(c) If the Equipment is damaged, the Lessee shall promptly repair the same at its own expense. When such damage has been repaired to the satisfaction of the Lessor and paid for, there shall be paid or credited to the account of the Lessee, any money received by the Lessor on account of any insurance policy maintained by the Lessee with respect to such damage under Paragraph 11 above.

(d) If any Equipment is stolen, lost, confiscated or damaged beyond repair, the Lessee shall pay the Lessor, in cash, the "Stipulated Loss Value" specified in the Lease Schedule. The Lessee shall continue to pay the periodic rental payments until the Stipulated Loss Value is paid to the Lessor in full, and the Stipulated Loss Value payable to the Lessor shall be the amount specified for the month in which the payment of the Stipulated Loss Value is made to the Lessor. Upon the receipt of such payment, the Lessor shall, subject to the rights of any insurer providing coverage on the Loss, transfer to the Lessee all of the Lessor's interest in the Equipment subject to the Loss (on an "as is, where is" basis) and the rent payable to the Lessor under this Lease shall be reduced by the amount of rent attributable to such Equipment.

13. LESSOR'S PERFORMANCE OF LESSEE'S OBLIGATIONS. If the Lessee shall fail to perform promptly any of its obligations under this Lease, the Lessor may, at its option, perform any act or make any payment which the Lessor deems necessary for the maintenance and preservation of the Equipment and the Lessor's title thereto, including payments for satisfaction of liens, repairs, taxes, levies, and insurance; and all sums paid or incurred by the Lessor in connection therewith, shall be additional rent under this Lease and shall be payable to the Lessor on demand. The performance of any act or payment by the Lessor shall not be deemed a waiver or release of any obligation or default on the part of the Lessee.

14. SECURITY DEPOSIT. Upon the execution of each Lease Schedule, the Lessee shall deposit with the Lessor the amount stated therein as security for the full and faithful performance by the Lessee of all terms, covenants and conditions required under this Lease. The Lessor shall not be obligated to keep the security deposit in a segregated account, and the Lessor shall have no obligation to pay any interest on the amount of the security deposit. The security deposit shall not be construed as rent (unless accepted by the Lessor in writing as rent) or release the Lessee of any obligation to the Lessor, and the Lessor may at any time apply the same to the payment of any indebtedness of the Lessee to the Lessor or any loss or expense incurred by the Lessor due to the Lessee's default. If any portion of the security deposit is so applied to any indebtedness of the Lessee, the Lessee shall, upon the demand of the Lessor, pay such amount as may be necessary to restore the full amount of the security deposit. The security deposit (or the balance thereof) shall be returned to the Lessee, without interest, upon the Lessee's full performance and satisfaction of all of its obligations to the Lessor under this Lease.

15. MAINTENANCE OF EQUIPMENT; ALTERATION. The Lessee shall at all times repair and maintain the Equipment in accordance with standards of good maintenance, and at the expiration of the Rental Term shall return the Equipment to the Lessor in good operating condition, subject to normal wear and tear of the Equipment based on proper use and maintenance thereof. The Lessee may, with the Lessor's consent, alter and remodel the Equipment, and install thereon and remove there from any accessories and equipment as the Lessee shall consider advisable for the purpose of its operations but not in excess of the manufacturer's rated capacity of the Equipment; provided, however, the Lessee shall at the expiration of the Rental Term (if so required by the Lessor), restore the Equipment to its original condition, subject to normal wear and tear. All parts which are incorporated into the Equipment shall be the property of the Lessor, and all parts removed there from and replaced in the course of repair, alteration and remodeling or restoration thereof, shall be the property of the Lessee. During the Rental Term, the Lessee shall maintain complete records covering the repair, maintenance, and any alteration or remodeling of the Equipment.

16. USE OF EQUIPMENT; LESSOR'S INSPECTION AND REPORTS. The Lessee may possess and use the Equipment in accordance with this Lease, provided that any such use is in conformity with all applicable laws, any insurance policy and any manufacturer's warranties covering the Equipment. The Lessor shall have the right, upon reasonable prior notice to the Lessee and during the Lessee's regular business hours, to inspect the Equipment and maintenance records at the premises of the Lessee or wherever the Equipment may be located. The Lessee shall promptly notify the Lessor of all details arising out of any change in location of the Equipment, any encumbrances thereon or any accident resulting from the use or operation thereof.

17. LESSEE'S PURCHASE OPTION.

(a) If at the expiration of the Rental Term specified in the Lease Schedule the Lessee shall not be in default under any provision of this Lease, the Lessee shall have the option to purchase the Equipment (on an "as is, where is" basis) for a purchase price equal to the then **FAIR MARKET VALUE** of such Equipment; provided that the Lessee has given the Lessor written notice of its intention to exercise this purchase option at least sixty (60) days prior to the expiration of the Rental Term.

(b) If the Lessor and the Lessee are unable to determine the fair market value of the Equipment by mutual agreement, then such value shall be determined by an independent appraiser

mutually acceptable to the Lessor and the Lessee. If the parties are unable to select the appraiser by mutual agreement, then the following procedure shall apply: The Lessor and the Lessee shall each designate an appraiser, and the two designated appraisers shall select the third appraiser. The two closest valuations shall be averaged, and the third valuation shall be disregarded in determining the valuation, which shall be binding on the parties; provided, however, if the spread between the highest valuation and the median valuation is equal to the spread between the lowest valuation and the median valuation, then all three valuations shall be averaged in determining the valuation. The Lessor and the Lessee shall each pay for the fees of its own designated appraiser, as well as one-half of the fees of the third appraiser. If, for any reason, the Lessee shall elect to rescind its option to purchase or otherwise fail to consummate the purchase of the Equipment after the appraisal procedure has been initiated, then all costs of the appraisal procedure shall be borne by the Lessee.

(c) Although the Equipment is to be sold (on an "as is, where is" basis) it shall be assumed for purposes of determining the fair market value of the Equipment that the Equipment is in good operating condition, subject only to normal wear and tear (it being understood that the fair market value of the Equipment shall not be reduced as a result of the Lessee's failure to repair and properly maintain the Equipment in a good operating condition). Payment of the purchase option price shall be due no later than the expiration date of the Rental Term for the Equipment, and if the payment is not made on or before such expiration date, the Lessee shall pay interest on the purchase option price from the expiration date to the date on which the purchase option price is paid to the Lessor. Interest shall be computed at the interest rate specified in the Lease Schedule for past due amounts.

18. SURRENDER OF EQUIPMENT; HOLDOVER RENT. Upon the expiration of the Rental Term, and subject to the provisions of Paragraph 17 above, the Lessee shall, at its own expense, deliver the Equipment, in good repair, condition and working order, ordinary wear and tear resulting from proper use and maintenance excepted, to the location or person designated by the Lessor for the return of the Equipment. In addition, the Lessee shall turn over to the Lessor true and complete copies of all records pertaining to the repair, maintenance, and any alteration or remodeling of the Equipment during the Rental Term, including the records covering work performed pursuant to any service contracts entered into by the Lessee with the Vendor or manufacturer of the Equipment. If the Equipment is not returned to the Lessor upon the expiration of the Rental Term, the Lessee shall pay to the Lessor, as holdover rent, an amount equal to 1/30th of the monthly rental payment specified in the Lease Schedule for such Equipment, for each day following the expiration date until the Equipment is delivered to the Lessor pursuant to the requirements of this Lease.

19. TAX INDEMNIFICATION.

(a) The Lessor and the Lessee have entered into this Lease on the basis that it will qualify as a "true lease" for federal and state income tax purposes, and the Lessee acknowledges that the Lessor shall be entitled to the depreciation deductions, credits and other benefits ("Tax Benefits") as are provided by the Internal Revenue Code of 1986, as amended (the "Code"), and by the tax laws of the State of Hawaii ("Hawaii Tax Law") to the owner of the Equipment at the time each Lease Schedule is executed by the parties. The Lessee further acknowledges that the lease rent payable hereunder has been determined, in large part, upon the assumption that the Lessor shall be entitled to claim the Tax Benefits. The Lessee will not directly or indirectly take any action or file any tax returns or other documents inconsistent with the intent to qualify this Lease as a true lease for tax purposes and the Lessee will file such returns, take such actions and execute such documents as may be reasonable and necessary to facilitate the intent of this paragraph. For purposes of this Paragraph 19, the "Lessor" shall include any affiliated group of corporations of which the Lessor is presently or may become a member and which files a consolidated income tax or franchise tax return.

(b) If for any reason (including, without limitation, changes in or interpretations of tax laws), the Lessor shall be unable to claim, lose the benefit of, or suffer a disallowance or recapture of all or any portion of the Tax Benefits, or if the Lessor's net rate of return with respect to the Lease shall

be adversely affected by a change in the corporate income or franchise tax rates (all of the foregoing events being hereinafter referred to as a "Loss"), the Lessee shall, upon written notice thereof by the Lessor, promptly pay to the Lessor an amount which, after deduction of all taxes required to be paid by the Lessor in respect to the receipt thereof, shall be equal to (i) such sums as are necessary to cause the Lessor's net rate of return with respect to this Lease to equal the net rate of return the Lessor would have received if such Loss had not occurred, plus (ii) such sums as will reimburse Lessor, on an after-tax basis, for any reasonable costs, attorneys' fees, interest, and penalties incurred in connection with the Tax Benefits which are lost, disallowed, or recaptured. The amount of the indemnification payment shall be determined by the Lessor via the Warren and Selbert LAS2/ABC lease analysis system or other comparable lease analysis software program selected by the Lessor. If the Rental Term for the Equipment has not expired, the Lessee shall have the option of paying the indemnification payment in a lump sum or spreading it over the remaining lease rental payments. If any such indemnification payment affects the Stipulated Loss Value of the Equipment, the Stipulated Loss Value specified in the Lease Schedule shall be appropriately adjusted by the Lessor. If a verification of the indemnification payment is requested by the Lessee, the Lessor shall provide, at the Lessee's expense, a written verification by the Lessor's certified public accounting firm or other certified public accounting firm of comparable size and stature in the community, confirming the accuracy of the Lessor's computation of the amounts claimed by the Lessor pursuant to this indemnification.

If a claim shall be made by the Internal Revenue Service or the Hawaii Department of Taxation which, if successful, would require the Lessee to indemnify the Lessor or its assignee under this Paragraph 19(b), and if the Lessor, at the Lessee's sole cost and expense, receives a written opinion of tax counsel acceptable to the Lessor that there is substantial authority to contest such claim, then the Lessor shall either (i) waive its rights to such indemnification, or (ii) at the Lessee's sole cost and expense, use its best efforts and take such actions as may be reasonably necessary to contest such claim. The Lessee's obligations under this Paragraph 19 shall survive the expiration or termination of this Lease.

20. ASSIGNMENT BY LESSOR; RIGHT TO CREATE SEPARATE LEASES.

(a) All rights of the Lessor under this Lease and in the Equipment covered thereby may be assigned, pledged, mortgaged, transferred or otherwise disposed of, either in whole or in part, without notice to the Lessee, but always subject to the rights of the Lessee under this Lease. The Lessor may, in its sole option, elect to sever this Lease and treat each Lease Schedule as a separate lease, without obtaining the consent or approval of the Lessee. If this election is made by the Lessor, the Lessee shall, upon the Lessor's request, execute such instruments as may be necessary to confirm the severance of this Lease into more than one lease and shall provide an appropriate estoppel certificate to confirm the absence of any defaults by the Lessor under this Lease. The Lessee has no right to cause this Lease to be severed into separate leases without the Lessor's approval, which approval may be granted or withheld in the Lessor's sole and absolute discretion.

(b) If the Lessor assigns this Lease or the rent due or to become due hereunder or any other interest herein, as security for any of Lessor's indebtedness or otherwise, no breach or default by the Lessor under this Lease shall excuse the Lessee's performance of its obligations hereunder, and the Lessee shall, upon receiving notice of such assignment, pay all rent to the Lessor's assignee. The Lessee's obligation to pay the rent to the Lessor's assignee shall be absolute and unconditional and shall not be subject to any defense or offset, and the Lessor's assignee shall not be obligated to the Lessee to perform any duty, covenant or condition required to be performed by the Lessor under this Lease.

(c) No assignment of this Lease by the Lessor shall interfere with the Lessee's quiet enjoyment and use of the Equipment so long as the Lessee is not in default in performing its obligations under this Lease.

21. ASSIGNMENT BY LESSEE. The Lessee shall not assign, sublease or otherwise transfer its interest in this Lease or the Equipment covered thereby, nor shall Lessee pledge, mortgage or otherwise encumber the Equipment, without the Lessor's prior written consent. Without limiting the

generality of the foregoing, if the Lessee is a business organization and not an individual, the dissolution, merger, consolidation or other reorganization of the Lessee, or the sale or other transfer of more than fifty percent (50%) of the value of the assets of the Lessee, shall be deemed to be an assignment or transfer of the Lessee's rights in this Lease. In addition:

(a) If the Lessee is a partnership, a withdrawal or change, voluntary, involuntary or by operation of law, of any general partner or partners owning, individually or in the aggregate, an interest representing one-third or more of the profits and losses of the Lessee, shall be deemed an assignment or transfer of the Lessee's rights under this Lease; or if the partnership is a limited partnership, the transfer of one-third or more of the limited partnership units of the Lessee shall be deemed an assignment or transfer of the Lessee's rights under this Lease; or if the Lessee is a limited liability partnership, the sale or other transfer of a "controlling percentage" (as defined below) of the profits and losses of the Lessee; and

(b) If the Lessee consists of more than one person or entity, a purported assignment, voluntary, involuntary or by operation by law, from one person or entity to the other shall be deemed an assignment or transfer of the Lessee's rights under this Lease; and

(c) If the Lessee is a corporation, the sale or other transfer of a controlling percentage of the capital stock of the Lessee, or any corporation directly or indirectly controlling the Lessee, shall be deemed an assignment or transfer of the Lessee's rights under this Lease. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing more than one-third of the total combined voting power of all classes of the Lessee's capital stock issued, outstanding, and entitled to vote for the election of directors.

(d) If the Lessee is a limited liability company, the sale or other transfer of a controlling percentage of the controlling interest of the Lessee or any entity directly or indirectly controlling the Lessee, shall be deemed an assignment or transfer of the Lessee's rights under this Lease. In addition to the above, if the Lessee is a manager-managed limited liability company, a withdrawal or removal of any manager shall be deemed an assignment or transfer of the Lessee's rights under this Lease.

As used in clauses (a) and (d) above, the phrase "controlling percentage" means either (1) the ownership of, and the right to vote, an interest possessing more than one-third of the voting rights of the company or (2) the ownership of more than thirty-three and one-third percent (33-1/3%) of the economic interest in the Lessee.

No assignment or transfer shall in any way release the Lessee or any guarantor of this Lease from their obligations under this Lease or any guaranty. The Lessee and any guarantor shall remain primarily liable to the Lessor for the payment of rent and the performance of all other obligations due under this Lease or any guaranty, notwithstanding any such assignment or transfer. If the Lessee assigns or transfers this Lease without the Lessor's consent, the Lessor may demand and collect rent payments from the purported assignee or transferee without waiving its right to enforce this Lease against the Lessee, and such collection of rent by the Lessor shall not be deemed a waiver of any rights of the Lessor under this Lease or any guaranty.

If the Lessee desires the Lessor's consent to the assignment or transfer of this Lease, the Lessee shall give the Lessor not less than sixty (60) days' prior written notice thereof. Notwithstanding any provision to the contrary, the Lessor may, in addition to any other reasons supportive of refusal to consent, refuse to consent to an assignment or transfer because of an honest belief, reasonably formed:

(i) That the proposed assignee is financially unable to perform in accordance with the terms of this Lease; or

(ii) That the use to be made of the Equipment by the proposed assignee is not within the scope of the use specified in this Lease or the Lease Schedule.

Without limiting the foregoing, the Lessor must at all times be satisfied with the proposed assignee's experience, management ability and financial capacity. The Lessor shall consent to a proposed merger or transfer of the Lessee's corporate stock, partnership units, membership interests, or assets only if satisfied with all particulars, including but not limited to, the financial status, place of organization and the financial, personnel, management and experience qualifications of the proposed assignee.

The Lessor may require an investigation of the financial condition, business reputation, credit standing, performance history, quality of business operation and other relevant aspects of the Lessee's proposed assignee to be conducted to enable the Lessor to make an informed decision on whether the Lessor should consent to the assignment. All reasonable costs of such an investigation shall be paid for by the Lessee.

Notwithstanding any provision to the contrary, the Lessor may, in its sole discretion, withhold its consent to any assignment or transfer of this Lease or the Equipment which involves a relocation of the Equipment outside the State of Hawaii; it being agreed that the terms of this Lease are based on the Equipment being located in the State of Hawaii and that the Lessor may not be willing, except in special circumstances, to register to do business in the jurisdiction in which the Equipment is to be relocated.

Any assignment or transfer of this Lease by the Lessee without the prior written consent of the Lessor shall constitute an event of default under this Lease.

22. ADMINISTRATION FEES. The Lessor shall have the right to collect from the Lessee an administration fee for processing any consents, modifications or amendments relating to this Lease. The administration fee shall be based upon the Lessor's standard processing fees, as determined from time to time during the Lease Term, and shall include all costs and expenses, including reasonable attorneys' fees, incurred by the Lessor in processing the matters requested by the Lessee.

23. DEFAULTS. If (1) the Lessee shall default in the payment of rent or any other amount due to the Lessor under this Lease; or (2) the Lessee shall default in the observance or performance of any term, covenant or condition of this Lease; or (3) the Lessee shall die, or become incompetent or insolvent; or (4) the Lessee shall fail to comply with the insurance requirements of this Lease, or if the insurance is canceled or the coverage reduced prior to the termination of this Lease; or (5) the Lessee shall create any unauthorized lien or encumbrance on the Equipment which shall adversely affect the Lessor's rights under this Lease and in the Equipment; or (6) a proceeding in bankruptcy, receivership, reorganization or insolvency is instituted by or against the Lessee, or the Lessee shall make an assignment for the benefit of its creditors; or (7) the Equipment is involuntarily transferred by operation of law, confiscated, attached, seized or threatened with confiscation, attachment or seizure; or (8) the Lessee shall be in default under any other lease between the Lessor and the Lessee and any applicable grace period therefore has expired; or (9) any guaranty of this Lease shall be repudiated or breached, or any guarantor of this Lease shall die, or become incompetent, or make an assignment for the benefit of his creditors, or become involved in any proceeding in bankruptcy, receivership, reorganization or insolvency affecting his assets, and upon the occurrence of any of the foregoing events, the Lessee shall fail to provide a substitute guarantor whose financial responsibility and creditworthiness are, in the Lessor's reasonable judgment, at least equal to that of the original guarantor within forty-five (45) days after a request therefore is made by the Lessor; or (10) the Lessee shall engage in any act or activity that, in the Lessor's exclusive judgment, shall in any way prejudice or render insecure the Lessor's rights in the Equipment, **THEN** in any of such events, the Lessor may terminate this Lease, or, at its election, exercise any one or more of the following remedies, with or without terminating this Lease:

(a) Recover from the Lessee the sum of (i) all delinquent rental payments and other sums due to the Lessor under this Lease, (ii) the amount of the Stipulated Loss Value (such amount being computed by multiplying the total Capitalized Cost of the Equipment by the applicable percentage set forth in the Stipulated Loss Schedule attached to the Lease Schedule, opposite the last month for which a

delinquent monthly rental payment shall be due from the Lessee), and (iii) interest and late charges due thereon; or

(b) Enter upon the Lessee's premises and take possession of the Equipment, without notice or demand and without any court order or other process of law, and the Lessee hereby waives any damages occasioned by such taking of possession; or

(c) Lease the Equipment to any other person upon such terms and conditions as the Lessor, in its discretion, shall determine; or

(d) Sell or otherwise dispose of the Equipment in such commercially reasonable manner as the Lessor shall determine; or

(e) Without notice to the Lessee, apply or set-off against any sums due under this Lease all security deposits, advance payments, proceeds of letters of credit, certificates of deposit (whether or not matured), securities or other additional collateral held by the Lessor or otherwise credited by or due from the Lessor to the Lessee; or

(f) Pursue any applicable remedies provided under the Hawaii Uniform Commercial Code or applicable law; or

(g) Bring any action for damages or pursue any other remedy provided by law.

No right or remedy herein conferred upon or reserved by the Lessor is exclusive, but shall be cumulative and may be enforced separately or concurrently from time to time. The proceeds of any rental or sale of the Equipment, after deducting all costs and expenses incurred in the repossession, repair, storage, rental or sale, shall be credited to the payment of the Lessee's obligations hereunder. The Lessee shall remain liable for any deficiency. A termination of this Lease shall occur only upon written notice by the Lessor to the Lessee. Regardless of the remedy or remedies pursued by the Lessor, the Lessee shall be liable for all costs of collection, repossession, storage, rental, sale or other charges, including reasonable attorneys' fees incurred by the Lessor in enforcing any of its rights under this Lease.

24. FORCE MAJEURE. The Lessor shall not be liable for any delay in delivering the Equipment, or for any failure to perform any provision hereof, resulting from fire or casualty, riot, strike or other labor difficulty, governmental regulation or restriction or any cause beyond the Lessor's control.

25. NO WAIVER. The failure of either the Lessor or the Lessee in any one or more instances to insist upon the performance of any of the terms, covenants or conditions of this Lease, to exercise any right or privilege in this Lease conferred or the waiver of any breach or any term, covenant or condition of this Lease, shall not be construed as thereafter waiving any such term, covenant, condition, right or privilege, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. Without limiting the foregoing, the Lessor's acceptance of any partial payments or delinquent payments (and any late charges or interest thereon) shall not be deemed to be a waiver by the Lessor of any term, covenant or condition of this Lease to be performed or observed by the Lessee, and the Lessor shall be entitled to pursue any remedy available to it hereunder until the Lessee has fully performed all of its obligations under this Lease. Any check for less than the full amount owed by the Lessee, with an endorsement or accompanying statement that the payment constitutes an accord and satisfaction, may be accepted by the Lessor without prejudice to the Lessor's right to collect the full amount owed by the Lessee; it being understood that the concept of accord and satisfaction is not applicable to the payments required by this Lease.

26. NOTICE. Any notice given under this Lease by the Lessor to the Lessee may be given personally or by certified mail, postage prepaid, addressed to the Lessee at the Lessee's address as set forth in this Lease. Any notice given under this Lease by the Lessee to the Lessor shall be given by sending the same by certified mail, postage prepaid, to the Lessor at its address as set forth in this Lease or by serving the same personally at the office of the Lessor.

27. INDEMNIFICATION. The Lessee shall indemnify, defend and hold the Lessor, its successors and assigns, harmless from and against all losses, damages, injuries, claims, demands, liabilities, costs and expenses (including reasonable attorneys' fees incurred by the Lessor in the defense of any claims or actions) arising out of the condition, use or operation of the Equipment during the term of this Lease, including without limitation, all losses, damages, liabilities, claims, costs and expenses arising from the death or injury of any person or damage to any property; provided, however, this indemnification shall not apply to any losses, damages, injuries, claims, demands, liabilities, costs and expenses caused by the negligence or willful misconduct of the Lessor or any of its agents or employees, and provided further that the foregoing exclusion for the Lessor's negligence or willful misconduct shall not apply to claims that the Lessor was negligent in leasing the Equipment to the Lessee or in failing to properly maintain the Equipment or claims of strict liability in tort based on the Lessor's ownership of the Equipment. The Lessor shall have reasonable approval rights with respect to the selection of legal counsel handling the defense of any indemnified claim or matter on behalf of the Lessor. This indemnification is based upon the Lessor's status as a finance lessor; it being agreed that the Lessee has selected the Equipment and the Lessor has no duty to inspect and maintain the Equipment and has no right to possession of the Equipment during the Rental Term for the Equipment. This indemnification is, therefore, a material business term of this Lease and shall survive the expiration or termination of this Lease.

28. GOVERNING LAW AND VENUE; WAIVER OF JURY TRIAL.

(a) This Lease shall be governed by and interpreted under the laws of the State of Hawaii. The venue for any legal action relating to this Lease shall be Honolulu, Hawaii. If the Lessee is not a resident of the State of Hawaii, the Lessee irrevocably submits to the jurisdiction of the state courts of the State of Hawaii and the United States District Court for the District of Hawaii for purposes of any legal action relating to this Lease. However, this paragraph shall not preclude the Lessor, in its sole discretion, from initiating any legal action or proceeding in any other jurisdiction where the Lessee or its assets can be found.

(b) The Lessor and the Lessee each hereby waives trial by jury in any legal action, proceeding or counterclaim brought by either party against the other on any matter whatsoever arising out of, or in any way connected with, this Lease and the Equipment covered thereby, including, without limitation, claims of breach of contract or claims for injuries and damages.

_____ (Lessee's Initials)

29. GENERAL PROVISIONS.

(a) **Binding Force.** This Lease shall be binding upon and inure to the benefit of the Lessor, the Lessee, and their respective heirs, personal representatives, successors, successors in trust, and permitted assigns.

(b) **Gender.** The use of any gender shall include all genders, and the use of the singular shall apply in the plural sense, where more than one party has executed this Lease as the Lessee and the context shall so require.

(c) **Joint and Several Liability.** The obligations of all persons signing this Lease as Lessee shall be joint and several.

(d) **No Partnership.** By entering into this Lease, Lessor shall not, for any purpose, become a partner of the Lessee in the conduct of the Lessee's business, a joint venturer or a member of a joint enterprise with the Lessee.

(e) **Lessor's Consent.** Whenever the Lessor's consent or approval is required, unless the Lessor has reserved the right of sole or absolute discretion, such consent or approval shall not be unreasonably withheld, and no charge shall be made therefore other than the administration fee

described in Paragraph 22 and other provisions of this Lease for processing the Lessor's consent or approval.

(f) **Severability.** If any provision of this Lease shall be deemed invalid or unenforceable, the remaining provisions of this Lease shall not be affected thereby and shall remain in full force and effect as binding obligations of the parties.

(g) **Amendments.** This Lease may not be amended except by a written instrument executed by the parties.

_____ (Lessee's Initials)

(h) **No Oral Representations and Agreements.** The Master Lease Agreement, all Lease Schedules now or hereafter executed by the parties, and all other written instruments now or hereafter attached to or specifically described in this Lease or acknowledged by both parties in writing (collectively called the "Lease Documentation") constitute the entire agreement between the Lessor and the Lessee with respect to the lease of the Equipment. The Lessee acknowledges that no other written or oral agreements or representations have been made by the Lessor with respect to this Lease or the Equipment, except as set forth in the Lease Documentation or in any written document executed by the Lessor's duly authorized representative.

_____ (Lessee's Initials)

(i) **Commitment Letters Superseded.** This Lease (together with all Lease Schedules) supersedes all commitment letters or proposal letters relating to the Equipment, and in the event of any conflict between the provisions of this Lease and those of any commitment letters or proposal letters, the provisions of this Lease shall control.

(j) **Savings Clause.** If any interest rate provided in this Lease shall transcend any limitation imposed by any applicable law, such interest rate shall be reduced to the maximum rate permitted by the applicable law.

30. SIGNIFICANCE OF LEASE PROVISIONS. Although most of the terms of this Lease are contained in the Lessor's printed form documentation, the Lessee acknowledges that the provisions of this Lease have been bargained for by the Lessor in the Lessor's underwriting of this Lease and the determination of the lease rental rate to be charged the Lessee under this Lease.

_____ (Lessee's Initials)

31. AUTHORIZATION TO FILE FINANCING STATEMENTS; LESSOR'S RIGHTS IN COLLATERAL; UPDATING INFORMATION.

(a) The Lessee hereby irrevocably authorizes the Lessor at any time and from time to time to file in any jurisdiction initial financing statements and amendments that relate to all of the Equipment covered by this Lease and which contain any information as required by law for the sufficiency or filing office's acceptance of any statement or amendments, including, without limitation, (i) whether the Lessee is an individual, (ii) whether the Lessee is an organization, the type of organization and any organization identification number issued to the Lessee, (iii) the Lessee's tax identification number (Social Security No. or Employer Identification No.), and (iv) in the case of a financing statement filed as a fixture filing, a sufficient description of the real property to which the Equipment relates.

(b) For the limited purposes set forth herein, this Lease shall constitute a Security Agreement under Article 9 of the Hawaii Uniform Commercial Code (relating to Secured Transactions), and the Lessee hereby grants to the Lessor and its successors and assigns, a security interest in the Collateral (as defined below) to secure the performance and observance by the Lessee of all of the covenants, conditions and agreements required to be performed or observed by the Lessee under this Lease. As used herein, "Collateral" means all rents, profits and proceeds derived by the Lessee from any sublease of the Equipment; provided, however, if, despite the intention of the parties (as reaffirmed in

Paragraph 32 below), this Lease is construed as secured transaction between the Lessor and the Lessee, the term shall also mean the Equipment described in each Lease Schedule made a part of the Lease, and all proceeds from the disposition of the Equipment.

(c) In connection with the Lessor's filing of financing statements and amendments described above, the Lessee represents and warrants to the Lessor that the information set forth in the Lessee Sheet Fact attached to the Lease Schedule for the Equipment or previously delivered to the Lessor is true and correct, and the Lessee agrees to furnish any required or updated information to the Lessor promptly upon request to facilitate the filing of such financing statements or amendments to protect the Lessor's interest in the Equipment and, where appropriate, its interest in the rents from the subleasing of the Equipment and the proceeds from the disposition of the Equipment. In addition, the Lessee agrees as follows:

(If the Lessee is an individual): The Lessee will provide the Lessor with written notice of any change of residence by the Lessee, within thirty (30) days after any such change of address. This notice obligation shall apply not only to a permanent residency change but also to a move to a second home where the Lessee may reside for several months a year.

(If the Lessee is an organization): Without providing at least thirty (30) days prior written notice to the Lessor, the Lessee will not change its name, its place of business, or if the Lessee has more than one place of business, its chief executive office, its mailing address, organizational identification number (if it has one), or its type of organization, jurisdiction or other organizational structure.

The Lessee's agreement to provide such updated information to the Lessor shall be a continuing duty and obligation of the Lessee during the entire Lease Term.

32. NATURE OF TRANSACTION AS TRUE LEASE. IT IS THE INTENTION OF THE PARTIES THAT THIS LEASE IS A TRUE LEASE, AND NOT A CONDITIONAL SALE OF, OR A LOAN FOR, THE EQUIPMENT LEASED HEREBY, AND ALL OF THE PROVISIONS OF THIS LEASE SHALL BE CONSTRUED SO AS TO GIVE EFFECT TO THIS INTENTION OF THE PARTIES.

33. OTHER

The parties have executed this Master Lease Agreement on _____, 20__.

FIRST HAWAIIAN LEASING, INC.

COUNTY OF MAUI

By: _____
Name:
Title:

By: _____
Its: Director of Finance

"LESSOR"

"LESSEE"

APPROVAL RECOMMENDED:

By: _____

APPROVED AS TO FORM AND LEGALITY

By: _____
Deputy Corporation Counsel
County of Maui

EXHIBIT "2"

COUNTY OF MAUI EQUIPMENT LEASE RIDER

CONTRACT NO. C6480

This Lease Rider to the Lease identified in Schedule I to this Lease Rider (the "Lease") is intended by the parties to the Lease, as a matter of convenience and consistency, to amend and supplement the provisions of, and to supersede and control over any conflicting provisions of, the Lease. This Lease Rider is effective as of the date of execution by all parties.

ARTICLE I

DEFINITIONS

Section 1.01. Definitions. The following terms used in this Lease Rider will have the meanings indicated below unless the context clearly requires otherwise:

"Additional Rental" means all amounts, other than Base Rental, payable by Lessee to Lessor or its assignee pursuant to the Lease.

"Available Funds" means funds appropriated or otherwise made available, from time to time, by the Council of the County to pay amounts due under the Lease for the Fiscal Year in which such payments are due.

"Base Rental" means the rental, with separately stated principal and interest components, payable by Lessee to Lessor or its assignee pursuant to the Lease.

"Code" means the Internal Revenue Code of 1986, as it may from time to time be amended, and any successor statute.

"Council" means the Council of the County of Maui.

"County" means the County of Maui, a political subdivision of the State of Hawaii.

"Defeasance Obligation" means obligations of, or guaranteed as to principal and interest by, the United States or any agency or instrumentality thereof when such obligations are backed by the full faith and credit of the United States.

"Equipment" means the personal property identified in Schedule I to this Lease Rider.

"Expiry Date" means the date identified in Schedule I to this Lease Rider.

"Fiscal Year" means the fiscal year of the Lessee, which at the date of the Lease is the period from July 1 to and including the following June 30.

"Lease" means that certain Lease identified in Schedule I to this Lease Rider, as originally executed (including this Lease Rider) or as it may from time to time be amended or supplemented as provided herein.

"Lease Interests" means any fractional interests in the Lease, including, but not limited to, interests evidenced by trust receipts, beneficial interests or certificates of participation.

"Lease Term" means the term of the Lease as determined pursuant to Article III of this Lease Rider.

"Lessee" means the County, by its department identified in Schedule I to this Lease Rider.

"Lessor" means that certain lessor identified in Schedule I to this Lease Rider.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award made in connection with the Equipment, after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Purchase Price" means, as of any date of calculation, the amount identified in Schedule I to this Lease Rider and made a part hereof, and any supplements, addenda, or amendments thereto, which Lessee may pay or cause to be paid as of such date to Lessor in order to purchase the Equipment or a specific item thereof pursuant to Section 6.01 of this Lease Rider or to purchase the Lessor's interest in the Lease pursuant to Section 6.02 of this Lease Rider.

"Rental Payments" means the aggregate of the Base Rental and the Additional Rental payable by Lessee pursuant to the Lease.

"Rule 15c2-12" means Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

"State" means the State of Hawaii.

ARTICLE II

REPRESENTATIONS AND COVENANTS OF LESSEE; REPRESENTATIONS AND COVENANTS OF LESSOR

Section 2.01. Representations and Covenants of Lessee. Notwithstanding any other provision of the Lease, the Lessee makes the following, and only the following, representations, covenants and warranties for the benefit of Lessor and its assignee:

(a) The Lessee is a political subdivision of the State of Hawaii, and is authorized under the Constitution and laws of the State, and County of Maui FY____ Budget Ordinance No. _____, which appropriated funding to enter into the Lease, and

the transactions contemplated by the Lease and to perform all of its obligations under the Lease.

(b) The Lessee has been duly authorized to execute and deliver the Lease, and all requirements have been met, conditions have been satisfied and procedures have occurred necessary for the Lease to be a valid obligation of the Lessee, and, when duly executed and delivered by the Lessor, the Lease will be the valid obligation of the County, subject to the exercise of judicial discretion in appropriate cases and to the limitations on legal remedies against counties in the State.

(c) The execution and delivery of the Lease will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, indenture, bond, note, resolution, agreement or other instrument to which the County is a party or is otherwise subject.

(d) All approvals, authorizations, consents and orders of any governmental authority, legislative body, board, agency or commission having jurisdiction which would constitute a condition precedent to or the absence of which would materially and adversely affect the due performance by the County of its obligations under the Lease have been duly obtained.

(e) During the term of the Lease, the Equipment will be used by Lessee only for the purpose of performing one or more governmental or proprietary functions of Lessee consistent with the permissible scope of Lessee's authority.

(f) The Lessee covenants that it will not use or permit the use of the Equipment by any person in such manner or to such extent as would result in generating gross personal income for federal income tax purposes under Section 103 of the Code.

Section 2.02. Representations and Covenants of Lessor. In addition to any other representations or covenants contained in the Lease, the Lessor makes the following representations, covenants, warranties and acknowledgments for the benefit of Lessee:

(a) The Lessor covenants and agrees to undertake all responsibility for compliance with state and federal securities laws, including, but not limited to, responsibility for all actions of any placement agent or underwriter in connection with the offer or sale of Lease Interests. The Lessor acknowledges and agrees that the Lessee has made no undertaking to provide nor has it approved any disclosure or other information for use in connection with the sale of Lease Interests, and Lessor agrees to be fully responsible for any and all disclosure provided to potential investors. The Lessor represents and warrants that the sale of Lease Interests is exempt from Rule 15c2-12, and acknowledges and agrees that the Lessee has made no undertaking to provide any continuing or other disclosure following the execution and delivery of the Lease.

(b) The Lessor acknowledges and agrees that the approval by the County of the sale of Lease Interests pursuant to Section 7.01 of this Lease Rider is not approval of the form of Lease Interests or the form of sale of Lease Interests or the form or content of any disclosure documents used in connection with any offer or sale of Lease

Interests.

(c) The Lessor covenants and agrees to prominently disclose the following in any disclosure document used in connection with the offer or sale of Lease Interests:

The payment of rent by the County pursuant to the Lease is subject to appropriation by the Council of the County. The Council is not obligated to appropriate the rent. It may chose not to appropriate rent for any number of reasons and such failure does not constitute a default on the part of the County. The County has not participated in the creation of, or passed on or approved, the offer or sale of the Lease Interests or this disclosure document, which were created and prepared, respectively, by the Bank or its placement agent/underwriter without any review, input or information supplied by the County. The County has made no representation as to the tax-exemption of the interest component of the rent.

(d) Lessor acknowledges and agrees that any placement agent or underwriter of Lease Interests is acting as such as agent of Lessor and not as agent of Lessee.

(e) Lessor acknowledges and agrees that Lessee has made no representation nor supplied any opinion as to whether the interest component of the rent is exempt from any federal or state taxation, that the Lessee is under no obligation to pay or advance any funds (other than any arbitrage rebate required under Section 148(f) of the Code) to preserve or defend any such tax exemption, and that the Lessor is responsible for preparing and providing to the Lessee for timely filing a properly completed Form 8038-G.

ARTICLE III

LEASE TERM

Section 3.01. Commencement of Lease Term. The Lease Term shall commence on the date of execution of the Lease by both parties hereto and shall terminate on the Expiry Date, unless such term is sooner terminated as set forth in Section 3.02 of this Lease Rider. If prior to the Expiry Date the Rental Payments shall have been fully paid and retired, then the term of the Lease shall end simultaneously therewith.

Section 3.02. Termination of Lease Term. The Lease Term and the Lease will terminate as to the entire Equipment (or as to a specific item thereof as provided in Section 3.02(a)) upon the earliest of any of the following events:

(a) the exercise by Lessee of the option to purchase all (or a specific item) of the Equipment granted under the provisions of Article VI of this Lease Rider;

(b) a default by Lessee and Lessor's election to terminate the Lease pursuant to the terms and provisions of the Lease;

(c) the termination of this Lease pursuant to Section 4.03 of this Lease Rider

in the event of non-appropriation of funds by the Council; or

(d) the payment by Lessee of all Rental Payments and any other amounts authorized or required to be paid by Lessee under the Lease.

(e) when there shall have been deposited with a third-party escrow agent at or prior to the Expiry Date or a date when Lessee may exercise its option to purchase the Equipment or a specific item thereof, in trust for the benefit of the Lessor or its assignee and irrevocably appropriated and set aside to the payment of the Base Rental payments or Purchase Price, sufficient moneys and Defeasance Obligations, the principal of and interest on which when due will provide money sufficient to pay all principal, premium, if any, and interest components of the Base Rental payments when due to and including the Expiry Date or the Purchase Price on the date when Lessee has elected to exercise its option to purchase the Equipment, as the case may be; then and in that event all rights and interest of Lessor and its assignee in and under the Lease and all obligations of Lessee under the Lease shall thereupon cease, terminate, become void and be completely discharged and satisfied (except for the right of Lessor and the obligation of Lessee to have such moneys and such Defeasance Obligations applied to the payment of the Base Rental or Purchase Price) and Lessor's interest in the Equipment or applicable item thereof shall be transferred and conveyed to Lessee. In such event, Lessor shall cause an accounting for such period or periods as may be requested by Lessee to be prepared and filed with Lessee and all such instruments as may be necessary or desirable to evidence such discharge and satisfaction and transfer of the Equipment or applicable item thereof, and Lessor shall pay over to Lessee, as an overpayment of Base Rental payments or Purchase Price, all such moneys or such Defeasance Obligations held by it or its assignee pursuant hereto other than such moneys and such Defeasance Obligations as are required for the payment of the Base Rental payments or the Purchase Price, which moneys and Defeasance Obligations shall continue to be held in trust for the payment of the Base Rental payments or the Purchase Price, and shall be applied by Lessor to the payment of the Base Rental payments or the Purchase Price.

ARTICLE IV

RENTAL PAYMENTS

Section 4.01. Rental Payments Limited to Available Funds; Rental Payments to Constitute a Current Expense of the Lessee; No Pledge.

(a) Base Rental shall be payable to or upon the order of the Lessor at the office designated in Schedule I to this Lease Rider, provided that, not less than 15 days prior to a Base Rental payment date, the Lessor may designate in writing to the Lessee a different entity for receipt of payment, and payment of Base Rental by Lessee to such designee shall fully satisfy the obligation of Lessee to make such payment of Base Rental. Lessor hereby agrees that it will not, at any given time, designate more than one entity for receipt of payment of Base Rental.

(b) The obligation of Lessee to make Rental Payments shall be limited to Available Funds. In no circumstance shall Lessee be obligated to pay amounts due under the Lease from any source other than Available Funds, nor shall the Council be obligated in any manner to appropriate or otherwise make available Available Funds.

(c) The Lessor and the Lessee understand and intend that the obligation of the Lessee to pay Rental Payments under the Lease shall constitute a current expense of the Lessee and shall not in any way be construed to be a debt of the Lessee, nor shall the Lease be construed to be an instrument of indebtedness, in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by the Lessee. The Lease shall not create an immediate indebtedness for any aggregate payment which may become due during the Lease Term. The Lease, including the obligation of the Lessee to pay the principal and interest components of Base Rental payments, shall not be an obligation for which the full faith and credit of the Lessee is pledged. The Lessor and its assignee shall have no claim or lien on any revenues or other moneys of the Lessee, except Available Funds. Notwithstanding any other provisions of the Lease, the Lessee, in its sole and absolute discretion, may terminate the Lease as set forth in Section 4.03 of this Lease Rider.

Section 4.02. Continuation of Lease Term by the Lessee. The Lessee currently intends, subject to the provisions of Section 4.03 of this Lease Rider, to pay the Rental Payments for the entire Lease Term. The Lessee reasonably believes that Available Funds in an amount sufficient to make all Rental Payments during the Lease Term can be obtained. The Lessee intends that amounts sufficient to make such payments be included in the Mayor's budget request to the Council for each fiscal period; provided that, it is understood that the Council shall not be obligated to adopt such budget or to appropriate or otherwise make available Available Funds (however, Lessee's executive branch shall use its best efforts to encourage the Council to appropriate or otherwise make available Available Funds); and provided further that, Lessee expressly reserves the right to terminate the Lease as set forth in Section 4.03 of this Lease Rider.

Section 4.03. Nonappropriation. In the event sufficient Available Funds shall not be appropriated by the Council for the payment of the Rental Payments required to be paid in the next succeeding Fiscal Year to continue the leasing of the Equipment, the Lessee may terminate the Lease, without penalty, as to all of the Equipment at the end of the then-current Fiscal Year, and the Lessee shall not be obligated to make payment of the Rental Payments provided for in the Lease beyond the then-current Fiscal Year. Such termination shall not be considered or treated as a default under the Lease or any other document. If the Lease is terminated under this Section, the Lessee agrees to surrender to the Lessor, or its assignee, the Equipment, in good order and condition and in a state of repair that is consistent with prudent use and conscientious maintenance, except for reasonable wear and tear, and to cease use of the Equipment.

ARTICLE V

MAINTENANCE; MODIFICATION; TAXES; INSURANCE AND OTHER CHARGES

Section 5.01. Insurance. Notwithstanding any other provision of the Lease, Lessee shall be required to procure or cause to be procured and maintain or cause to be maintained for the Equipment throughout the Lease Term insurance relating to the Equipment which it shall deem advisable or necessary to protect its interests and the interests of the Lessor, which insurance shall afford protection in such

amounts and against such risks as are usually covered in connection with similar equipment owned by the Lessee; provided, that any such insurance may be maintained as self-insurance or under a master insurance policy or policies of the Lessee. All policies of insurance required to be maintained herein shall provide that the Lessor shall be given thirty (30) days' written notice of any intended cancellation thereof or reduction of coverage provided thereby.

Section 5.02. Damage, Destruction and Condemnation; Use of Net Proceeds. Unless Lessee shall have exercised its option to purchase the Equipment by making payment of the Purchase Price as provided herein, if prior to the termination of the Lease Term (a) the Equipment or any portion or item thereof is destroyed (in whole or in part) or is damaged by fire or other casualty or (b) title to, or the temporary use of, the Equipment or any portion or item thereof or the estate of Lessee or Lessor in the Equipment or any portion or item thereof shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds of any insurance claim or condemnation award to be applied to the prompt repair, restoration, modification, improvement or replacement of the Equipment or the applicable portion or item thereof. Any balance of the Net Proceeds remaining after such work has been completed shall be paid to Lessee.

Alternatively, if the proceeds of such insurance together with any other moneys then available for the purpose are at least sufficient to prepay an aggregate principal amount of Base Rental attributable to the portion or item of the Equipment so destroyed or damaged (determined by reference to the proportion which the acquisition, construction and installation cost of such portion or item of the Equipment bears to the acquisition, construction and installation cost of the entire Equipment), Lessee may, at its option, elect not to repair, restore, modify, improve or replace the damaged or destroyed or condemned portion or item of the Equipment and thereupon shall cause said proceeds to be used for the prepayment of Purchase Price.

ARTICLE VI

OPTION TO PURCHASE

Section 6.01. Option to Purchase Equipment. Lessor's interest in the Equipment or specific items thereof will be transferred, conveyed and assigned to Lessee and the Lease shall terminate with respect thereto upon the occurrence of the event set forth in subparagraph (a) of this Section 6.01, and at the option of Lessee, Lessor's interest in the Equipment or specific items thereof will be transferred, conveyed and assigned to Lessee and the Lease shall terminate upon the occurrence of the events set forth in subparagraphs (b) or (c) of this Section 6.01:

(a) at the end of the Lease Term, upon payment in full of all Rental Payments due under the Lease pertaining thereto; or

(b) on the dates set forth in Schedule I to this Lease Rider, upon payment of the then applicable Purchase Price as set forth in Schedule I to this Lease Rider, provided that Lessee shall deliver or cause to be delivered notice to Lessor of the intention to exercise the right to make such payment pursuant to this Section 6.01(b) not less than 45 days prior to such date of payment; or

(c) when there shall have been deposited with a third-party escrow agent at or prior to the Expiry Date or a date when Lessee may exercise its option to purchase the Equipment or a specific item thereof, in trust for the benefit of the Lessor or its assignee and irrevocably appropriated and set aside to the payment of the Base Rental payments or Purchase Price, sufficient moneys and Defeasance Obligations, the principal of and interest on which when due will provide money sufficient to pay all principal, premium, if any, and interest components of the Base Rental payments when due and including the Expiry Date or the Purchase Price on the date when Lessee has elected to exercise its option to purchase the Equipment, as the case may be.

Section 6.02. Option to Purchase Lease. In lieu of purchasing Lessor's interest in the Equipment or specific items thereof pursuant to Section 6.01 of this Lease Rider, at the option of Lessee, Lessor's or its assignee's interest in the Lease shall be transferred, conveyed and irrevocably assigned to a purchaser (or agent or assignee) designated by Lessee upon the occurrence of the events set forth in subparagraphs (b) or (c) of Section 6.01 of this Lease Rider and notice to the Lessor of Lessee's intention to exercise its option under this Section 6.02.

ARTICLE VII

ASSIGNMENT AND INDEMNIFICATION

Section 7.01. Assignment by Lessor. This Lease (including Lease Interests) may be sold, assigned or otherwise disposed of by Lessor. Lessee agrees to execute all documents, including notices of assignment and chattel mortgages or financing statements which may be reasonably requested by Lessor or its assignee to protect their interests in the Equipment and in the Lease during the Lease Term.

Section 7.02. Indemnification.

(a) Notwithstanding any other provision of the Lease to the contrary, the Lessor agrees to indemnify, defend, and hold harmless the Lessee against any and all losses, claims, actions, suits, judgments, demands, damages, liabilities, liens and expenses (including reasonable attorneys fees and reasonable costs of investigation) of any nature arising out of or relating to the sale, assignment or other disposition of the Lease or Lease Interests, including without limitation those caused by any actions or omissions or alleged actions or omissions of any underwriter or placement agent for the Lease or Lease Interests or those caused by or related to any untrue statement or alleged untrue statement of a material fact contained in any disclosure used in connection with the offer or sale of the Lease or Lease Interests, or caused by or related to any omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading in any material respect. The provisions of this paragraph shall survive termination of the Lease with respect to events occurring prior to such termination.

(b) The County shall be responsible for damages or injury caused by its officers, employees and agents in the course of their employment to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County, and the County shall pay for such damages and injury to the extent permitted by law, subject to Maui County Council approval. Any provision in the Lease providing for such obligation in any manner, directly, indirectly, expressly or by

implication, shall be null and void, ab initio. The provisions of this paragraph shall survive termination of the Lease with respect to events occurring prior to such termination. Notwithstanding any other provision of the Lease, this subsection (b) shall be the only indemnification by the Lessee of the Lessor and shall be subject to Section 4.01.

ARTICLE VIII

MISCELLANEOUS

Section 8.01. Substitution of Equipment. Any provision in the Lease restricting or otherwise limiting the ability of the Lessee to obtain other equipment in substitution of the Equipment shall be subject to review, amendment, and approval or disapproval by the Lessee and Lessor.

Section 8.02. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered by registered mail, postage prepaid, or by telecopy (in which case, telephone or mechanical confirmation is required), to the Lessor at the address set forth in Schedule I to this Lease Rider and to the Lessee c/o Director of Finance, County of Maui, 200 South High Street, Wailuku, Maui, Hawaii 96793 (telephone: (808) 270-7844; fax: (808) 270-7878).

Section 8.03. Severability. If any one or more of the agreements, conditions, covenants or terms required herein to be observed or performed by or on the part of Lessor or the Lessee shall be contrary to law, then such agreement or agreements, such condition or conditions, such covenant or covenants or such term or terms shall be null and void and shall be deemed separable from the remaining agreements, conditions, covenants and terms hereof and shall in no way affect the validity hereof. The Lessor and the Lessee hereby declare that they would have executed the Lease, and each and every other Article, Section, paragraph, subdivision, sentence, clause and phrase hereof irrespective of the fact that any one or more Articles, Sections, paragraphs, subdivision, sentence, clauses or phrases hereof or the application thereof to any person or circumstance may be held to be unconstitutional, unenforceable or invalid.

Section 8.04. Amendments. The Lease shall be amended in writing as may be mutually agreed by Lessor or its assignee and Lessee.

Section 8.05. Execution in Counterparts. The Lease may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.06. Applicable Law. The Lease shall be governed by and construed in accordance with the laws of the State. With respect to any suit, action or proceedings (collectively, the "Proceedings") relating to the Lease, the Lessor hereby irrevocably submits to the jurisdiction of the courts of the State, and waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such courts, waives any claim that the Proceedings have been brought in an

inconvenient forum and further waives the right to object, with respect to the Proceedings, that such court does not have any jurisdiction over the Lessor.

Section 8.07. Successors and Assigns. This Lease Rider shall inure to the benefit of and shall be binding upon the Lessor and the Lessee and their respective successors and assigns (including, without limitation, any purchaser or assignee of the Lease or Lease Interests).

Section 8.08. Tax Clearance. Pursuant to Haw. Rev. Stat. §103-53, any final payment to be made under any Base Rental payment schedule of the Lease shall be withheld from Lessor until a State and federal tax clearance is submitted to Lessee immediately prior to the time of final payment.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Lessor has executed this Lease Rider in its name and Lessee has executed this Lease Rider in its name, all as of the date first written.

Lessor: First Hawaiian Leasing, Inc.

By: _____

Lessee: County of Maui

By: _____

MARK R. WALKER
Its Director of Finance

Date: _____

APPROVAL RECOMMENDED:

Department of _____

APPROVED AS TO FORM
AND LEGALITY:

RICHELLE M. THOMSON
Deputy Corporation Counsel
County of Maui
(C6480, LF2018-0298)

STATE OF HAWAII I)
) SS.
COUNTY OF MAUI))

On this _____ day of _____, 20____, before me appeared MARK R. WALKER, to me personally known, who being by me duly sworn, did say that he is the Director of Finance of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui pursuant to Section 9-18 of the Charter of the County of Maui; and the said MARK R. WALKER acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name:

My commission expires:

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

_____	[Stamp or Seal]
Notary Signature: _____	
Date: _____	

(NOTE: NOTARY ALSO REQUIRED FOR LESSORS AUTHORIZED SIGNATORY)

STATE OF HAWAII)
) ss.
 COUNTY OF HONOLULU)

On this _____ day of _____, 20__, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Stamp or Seal]

Notary Public, State of Hawaii

Print Name:

My commission expires:

NOTARY PUBLIC CERTIFICATION	
Doc. Date: _____	# Pages: _____
Notary Name: _____	Judicial Circuit: _____
Doc. Description: _____	

[Stamp or Seal]	
Notary Signature: _____	
Date: _____	

SCHEDULE I

I. Definitions:

"Expiry date" means the date that the final lease payment is made for each of the rental payment schedules executed between the Lessor and Lessee.

"Lease" means Lease Schedule No. XXXXX dated X/XX/XX and any supplements, addends, or amendments thereto.

"Lessor" means First Hawaiian Leasing, Inc.

"Lessee" means the County of Maui, Hawaii.

"Department" means Lessee's Department of Parks and Recreation.

II. Equipment: X Year Lease Term

QTY	DESCRIPTION	AMOUNT
		\$
TOTAL COST OF ENTIRE EQUIPMENT:		\$

III. Purchase Price:

<u>Date</u>	<u>Principal</u>	<u>Purchase Price¹ Premium (% of Principal)</u>	<u>Total Price</u>
-------------	------------------	--	--------------------

See Lease Schedule XXXXX Stipulated Loss Value Schedule and Amortization Schedule.

IV. Lessor's Address (Including telephone and fax numbers):

First Hawaiian Leasing, Inc.
P.O. Box 1240
Honolulu, HI 96807
(808) 943-4954 Phone
(808) 943-4975 Fax

V. Office for Payment of Base Rental:

First Hawaiian Leasing, Inc.
P.O. Box 1240
Honolulu, HI 96807

Exhibit 3



COUNTY OF MAUI

LEASE LINE OF CREDIT FOR MUNICIPAL TAX-EXEMPT LEASES

TERM SHEET

Lessee: County of Maui ("County")

Lessor: First Hawaiian Leasing, Inc. ("FHL")

Lease Line of Credit Amount: \$2,500,000 annually for two (2) years, with three (3) one-year extension options from the effective date of the of the lease agreement, upon the mutual agreement of the Lessor and Lessee.

Equipment: Various NEW essential and necessary equipment to include but not limited to commuter buses, public safety vehicles, heavy equipment, Information Technology (IT) hardware, software, fiber optics lines, and other equipment mutually agreeable to Lessor and Lessee.

Lease Structure: Municipal Tax Exempt Lease ("TELP")

Lease Terms: 2, 3, 5, 7 or 10 years based on the asset class' depreciable life.

Interim/Progress Funding: Any progress payment(s) or interim funding to the vendor(s) will be under a 120-day Recourse Agreement accruing at an Interest Rate of First Hawaiian Bank's Prime Rate, floating. Repaying interest only monthly, with principal to be taken out by a lease transaction/schedule at lease commencement or delivery and acceptance of the financed equipment.

Repayment: Monthly in advance, final amount per lease schedule to be determined.

Index/Base Rate: Like-Term Daily Treasury Yield Curve Rates commonly known as Constant Maturities Treasure Rates ("CMT") as published in the U.S. Department of treasury web site <http://www.treas.gov/offices/domestic-finance/debt-management/interest-rate>;

Spread Over Index Rate:

Lease Terms (Year)	A Base Rate*	B Proposed Spread	C=A+B Lease Rate
2	1.89%	0.50%	2.39%
3	1.98%	0.50%	2.48%
5	2.20%	0.50%	2.70%
7	2.33%	0.50%	2.83%
10	2.40%	0.50%	2.90%

* Index/Base Rate as of 12/29/17

Rate Setting: Rate to be set on the date of delivery and acceptance of the equipment.

End of the Term Purchase Option: \$1.00

Security: Perfected priority UCC security interest in the various new equipment financed and Certificate(s) of Title of over-the-road licensed vehicle(s) naming First Hawaiian Leasing, Inc. as Lienholder and Lessor.

Documentation Fees: \$200.00 per lease schedule