



UNIVERSITY OF HAWAII

BOARD OF REGENTS

October 12, 2012

The Honorable Donna Mercado Kim
Chair, Senate Special Committee on Accountability
Hawai'i State Legislature
Hawai'i State Capitol, Room 210
Honolulu, HI 96813

Dear Senator Kim:

This letter follows up on requests made during the information briefing on Tuesday, October 2, 2012, particularly as to details of costs incurred by the University because of the concert incident and subsequent investigations (including the Special Committee's).

1. Direct Costs

The following costs are directly attributable to the concert incident:

- Ticket printing
 - 4235 tickets @ \$.05/ticket \$211.75
 - Paciolan ticket system fees \$10,962.00
 - Ticket Office student worker costs \$780.85

- Ticket sales proceeds disbursed to "promoters" and subsequently refunded to buyers from Athletics Department funds \$200,000.00

- Legal services – Starn O'Toole Marcus & Fisher
 - Contract amount – not to exceed \$75,000.00
 - Scope of work includes working with law enforcement on concert followup; also handled negotiations with Donovan after approach by Donovan's attorney
 - Invoices to date \$34,404.21

- Factfinding investigation and report – Cades Schutte
 - Contract amount – not to exceed \$50,000.00
 - No invoices yet received

2. Other Costs

Other costs that have been noted, but that are not only attributable to the concert incident, include:

- Legal services/subcontracted external relations for Committee's document requests, briefings, and related matters
 - Torkildson Katz Moore Hetherington Harris
 - Contract amount – not to exceed \$25,000.00
 - No invoices yet received
- Consultant costs for Operational and Financial Controls Improvement Advisory Task Group: KMH LLP has been contracted for an amount not to exceed \$50,000.00 to assist the task group. The task group was formed as part of the University's response to the concert incident, but its work will also support University's ongoing project to improve financial management through implementation of the Quali financial system and associated business process improvements.
- Athletic Director search consultant: as noted in testimony, the search for a new Athletic Director would have occurred regardless of the concert incident. The concert incident affected only the timing. Search consultant services have not yet been contracted, but are currently anticipated to cost approximately \$60,000.00, which will be privately raised.
- Jim Donovan's salary: as stated in testimony, the duties to which Jim Donovan has been reassigned, and which he will perform in his new position upon expiration of his current contract, are needed and valuable, and he is well-qualified to perform them. If he had not been reassigned, a position of this nature would still have been created and filled. Therefore, Jim's salary is not an additional cost arising from the concert incident.
- Internal personnel costs: a large amount of personnel time has been devoted to matters related to the concert incident and its aftermath. To the best of our knowledge, there has been no incremental cost (e.g. overtime pay), as time has been reallocated from other tasks and overtime-exempt employees have worked longer hours.

3. Copies of documents

Per your request, attached are copies of:

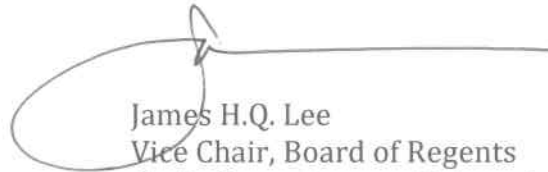
- Confidentiality Covenant signed by members of the Board of Regents' Advisory Task Group on Operational and Financial Controls Improvement.

- Contract between Research Corporation of the University of Hawaii (RCUH) and Hoakea Communications.
- Contract between RCUH and Bright Light Marketing Group, Inc.
- July 10 and 11 emails to all Regents regarding concert situation referred to in James Lee's testimony (previously provided).

4. Additional follow-up

We will continue to follow up on other items raised during the information briefing with UH administration and the Board of Regents.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop on the left and a long horizontal line extending to the right.

James H.Q. Lee
Vice Chair, Board of Regents
Chair, Committee on University Audits

A handwritten signature in black ink, written in a cursive style.

Carl A. Carlson Jr.
Vice Chair, Board of Regents
Chair, Committee on Budget and Finance

Enclosures

c: Eric Martinson, Chair, UH Board of Regents
M.R.C. Greenwood, President, UH System
Robert S. Katz, Esq.

CONFIDENTIALITY COVENANT

I have been selected to be a member of the University of Hawai'i Board of Regents' Advisory Task Group on Operational and Financial Controls Improvement (Task Group). In consideration for being selected as a Task Group member, I recognize and accept my responsibility to protect the confidentiality of the work, deliberations, and records of the Task Group (collectively the Task Group Work). I hereby covenant and agree that:

1. Keep Task Group Work confidential. I will keep all Task Group Work confidential and I will not, in any form or manner, directly or indirectly, divulge, disclose, release, or communicate any information I receive in connection with the Task Group Work.
2. Designated public and media contact. Board of Regents' Chair Eric Martinson has been designated as the public and media contact for the Task Group and I will not make any disclosures relating to the Task Group Work and I will direct all such requests for disclosures and any other inquiries or questions to Regents' Chair Martinson.
3. Removal from Advisory Task Group. I may be removed from the Task Group if I breach any of the confidentiality obligations described in this Confidentiality Covenant. I understand that, even if removed, the confidentiality obligations contained in the Confidentiality Covenant and the penalties, as may be appropriate, for any breach or violation shall still apply.
4. Penalties for violations. I further understand that any breach of the confidentiality obligations described in this Confidentiality Covenant may result in civil and criminal penalties pursuant to and consistent with applicable law, including, without limitation, Hawaii Revised Statutes Chapter 92F. I acknowledge and understand that if I breach or violate this Confidentiality Covenant, the University of Hawai'i will be obligated to defend me against any claims, actions, or proceedings arising there from only to the extent consistent with applicable laws, University policies and procedures, and the relevant collective bargaining or other labor related agreements.

I have read, understood, and hereby agree to abide by all the terms of this Confidentiality

Covenant, including all confidentiality obligations described herein.

Name (please print): _____

Signature: _____

Date: _____

AGREEMENT FOR SERVICES

This Agreement, effective the 1 day of May, 2012, is entered into between The Research Corporation of the University of Hawaii (hereinafter "RCUH"), a governmental agency of the State of Hawaii, whose address is 2800 Woodlawn Drive, Suite 200, Honolulu, Hawaii 96822, for the benefit of the Office of the Vice President for Research, University of Hawaii, (hereinafter "Project") and Hoakea Communications, (hereinafter "CONTRACTOR"), a corporation, under the laws of the State of Hawaii, whose business address and tax identification number are as follows: Seven Waterfront Plaza, 50 Ala Moana Boulevard #400, Honolulu, HI 96813, TIN 73-1680631

RECITALS

- A. RCUH is in need of the services described in this Agreement and its attachments.
- B. RCUH desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, RCUH and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by RCUH, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.
5. Other Terms and Conditions. The General Conditions and The Special Conditions if any, set forth in Attachments 5 and 6, are hereby made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, RCUH and the CONTRACTOR have executed this Agreement effective as of the date first above written.

PROJECT AUTHORITY


By James Gaines

Date , April 27, 2012

CONTRACTOR


By Barbara Tanabe

Its President
(Title)

Date 4-27-2012

RCUH

By 

Date 6/18/12

SCOPE OF SERVICES Attachment 1

Scope of Services

Provide strategic communications counsel to the University of Hawaii President for a wide range of University of Hawaii research projects and issues including, but not limited to, the Pacific Health Research Lab at Kalaeloa, the Thirty-Meter Telescope Project on Mauna Kea, the Advanced Technology Solar Telescope project on Haleakala, and any other research enterprises or projects that the university is involved with that may become the subject of publicity or community discussion, as agreed to by the President and Consultants as being suitable for inclusion within the scope of their services.

Strategic communications counsel will include monitoring local print, radio, television, and electronic media regarding significant University research projects, as determined by the President or her designee. Counsel will also monitor formal and informal discussions regarding these same projects within various business, government, and community circles and be prepared to make suggestions to the President or her designee for long-range management of said issues.

The consultant will identify and outline the most significant community concerns being expressed about the University's major research projects and issues, particularly those concerns that appear to be gaining attention within the community. The consultant will critique the University's proposed and ongoing communications regarding these research projects and issues and provide strategic advice to the President or her designees.

The Consultant will meet with the President at least monthly, or as many times as the President requests. Some of these meetings may be done by teleconference or the internet. Consultant will provide one written report at the end of each month summarizing the projects and issues monitored, the community concerns identified, and the perceived effectiveness of the University's communications.

TIME SCHEDULE
Attachment 2

Services performed under this AGREEMENT shall begin on May 1, 2012 and end no later than February 28, 2013.

COMPENSATION AND PAYMENT SCHEDULE
Attachment 3

The total amount of compensation for services performed under this AGREEMENT shall not exceed \$25,000,000, including all required taxes, reimbursable expenses, and other expenses incurred in order to accomplish the Scope of Work.

The CONTRACTOR shall invoice the PROJECT monthly for fees for all services rendered and costs incurred under this AGREEMENT.

Payment by the PROJECT is subject to a monthly submission, in duplicate, or a properly executed original invoice for the previous month's work and a monthly written summary as indicated in the Scope of Work. CONTRACTOR shall forward invoice and monthly summary to:

Keith Mattson
Office of the Vice President for Research
University of Hawaii
Suite 201, Manoa Innovation Center
2800 Woodlawn Drive
Honolulu, HI 96822

STANDARDS OF CONDUCT DECLARATION
Attachment 4

For the purposes of this declaration:

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employee under contract to the State or of the Constitutional Convention, but excluding legislators, delegates to the Constitutional Convention, justices and judges.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

On behalf of Hoakea Communications, CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR ~~(is)~~ (is not) a legislator or an employee or a business in which a legislator or an employee has a "controlling interest".
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a RCUH employee, or in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the RCUH within the preceding two years and who participated while in state office or employment on the matter with which the contract is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to the Agreement, for a fee or other consideration by an individual who, within the past twelve months, has been a RCUH employee.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, (a) within the past twelve months, served as a RCUH employee, and (b) participated while an employee on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the RCUH if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the 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 RCUH.

Dated: 5/1/2012

CONTRACTOR


By Barbara Tanabe

President
Its (Title)

GENERAL CONDITIONS
FOR SERVICES AGREEMENTS
Attachment 5

1. Coordination of Services by the State. RCUH, or RCUH's designee, shall coordinate the services to be provided by the CONTRACTOR in order to complete the Project. The CONTRACTOR shall maintain communications with RCUH, or RCUH designee, at all stages of the CONTRACTOR's work, and submit to RCUH or RCUH designee, for resolution, any questions which may arise as to the performance of this Agreement.
2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Agreement, the CONTRACTOR shall be 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, RCUH shall have a general right to inspect work in progress to determine whether in RCUH's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement. It is understood that RCUH 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 to RCUH.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents, shall not be considered agents or employees of RCUH for any purpose, and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the RCUH any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to RCUH employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability (if such liability is determined to exist) to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, 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 Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments and taxes, and (iii) general excise taxes. The CONTRACTOR is further responsible for obtaining all licenses, permits, and certificates that may be required by reason of this Agreement, including but not limited to a general excise tax license from the Department of Taxation, State of Hawaii.
 - e. The CONTRACTOR shall be responsible for securing any and all insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents which is or may be required by law. The CONTRACTOR shall further be responsible for payment of all premiums, costs and other liabilities associated with securing said insurance coverage.

3. Personnel Requirements.
 - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform the services required by this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Agreement, 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. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of RCUH. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by RCUH.
6. Conflict of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, which would or might conflict in any manner or degree with the performance of the CONTRACTOR's services under this Agreement.
7. Modifications of Agreement. Any modification, alteration, amendment, change, or extension to any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and RCUH.
8. Suspensions and Termination of Agreement.
 - a. RCUH reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR. Upon receipt of said notice, the CONTRACTOR shall immediately comply with said notice and suspend all work under this Agreement at the time stated.
 - b. If, for any cause, the CONTRACTOR breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the CONTRACTOR's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the RCUH, the RCUH shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination at least seven (7) calendar days before the effective date of such terminating. Furthermore, RCUH may terminate this Agreement without statement of cause at any time by giving written notice to the CONTRACTOR of such termination at least thirty (30) calendar days before the effective date of such termination.

- c. Upon termination of the Agreement, the CONTRACTOR shall, within four (4) weeks of the effective date of such termination, compile and submit in an orderly manner to RCUH an accounting of the work performed up to the effective date of termination. In such event, the CONTRACTOR shall be paid for the actual cost of the services rendered, but in no event more than the total compensation payable to the CONTRACTOR under this Agreement.
- d. In the event of termination of either type, or in the event of the scheduled expiration of the time of performance specified in this Agreement, all finished or unfinished material prepared by the CONTRACTOR shall, at RCUH's option, become RCUH's property and, together with all material, if any, provided to the CONTRACTOR by RCUH, shall be delivered and surrendered to RCUH on or before the expiration date or date of termination. For the purposes of this Agreement, "material" includes, but is not limited to any information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by the CONTRACTOR in connection with this Agreement, or furnished to the CONTRACTOR by RCUH. The terms do not include records which are maintained by RCUH solely for the CONTRACTOR's own use and which have only an ancillary relationship to the services provided under this Agreement.
- e. If this Agreement is terminated for cause, the CONTRACTOR shall not be relieved of liability to RCUH for damages sustained because of any breach by the CONTRACTOR of this Agreement. In such event, RCUH may retain any amounts which may be due and owing to the CONTRACTOR until such time as the exact amount of damages due to the RCUH from the CONTRACTOR has been determined. RCUH may also set off any damages so determined against the amounts retained.
9. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be from time to time, which in any way affect the CONTRACTOR's performance of this Agreement.
10. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and save harmless RCUH, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the malicious, reckless, or negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors occurring during or in connection with the performance of the CONTRACTOR's services under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
11. Disputes. No dispute arising under this Agreement may be sued upon by the CONTRACTOR until after the CONTRACTOR's written request to RCUH to informally resolve the dispute is rejected, or until ninety days after RCUH's receipt of the CONTRACTOR's written request, whichever comes first. While RCUH considers the CONTRACTOR's written request, the CONTRACTOR agrees to proceed diligently with the provision of services necessary to complete the Project.
12. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, 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 RCUH.
 - b. All information, data, or other material provided by the CONTRACTOR to RCUH shall be kept confidential only to the extent permitted by law.
13. Ownership Rights and Copyright. RCUH shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire". All such material shall be delivered to the RCUH upon expiration or termination of this Agreement. RCUH, at its discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement. The CONTRACTOR, however, reserves the right to use thereafter any ideas and techniques that may be developed during the performance of this Agreement.
 14. Publicity. The CONTRACTOR shall not refer to RCUH, or any project, office, agency, or officer thereof, or to the services provided pursuant to this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts to the CONTRACTOR about this Agreement shall be referred to RCUH.
 15. Payment Procedures: Final Payment. All payments under this Agreement shall be made only upon submission by CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement.
 16. Tax Clearance. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which requires a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service stating that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid. A tax clearance is required on final payment for agreements \$25,000 or more.
In addition to tax clearance prior to final payment, the CONTRACTOR is required to obtain a tax clearance from the Internal Revenue Service and State Department of Taxation prior to execution of this contract for all agreements \$25,000 or more.
 17. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
 18. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to RCUH at its address and to the CONTRACTOR at its address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient three (3) days after mailing or at the time of actual receipt, whichever is earlier.

19. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
20. Waiver. The failure of RCUH to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of RCUH's right to enforce the same in accordance with this Agreement.
21. Federal Provisions. If federal funds are expended under this contract, the CONTRACTOR shall comply with the applicable provisions of Attachment 32a.

SPECIAL CONDITIONS
Attachment 6



UNIVERSITY
of HAWAII®
SYSTEM

Office of the Vice President for Research

April 4, 2012

Ms. Lynette Lo Tom
President and CEO
Bright Light Marketing Group, Inc.
1001 Bishop Street, Suite 900
Honolulu, HI 96813-3408

Subject: Notice to Proceed

Dear Ms. Tom:

Transmitted herewith for your files is one duly executed copy of the RCUH Agreement, dated March 20th, 2012, for the provision of Public Outreach Services to the University of Hawaii for the development of the Pacific Health Research Lab at Kalaeloa (PHRL). You are hereby authorized to proceed with the work effective March 19, 2012, in strict accordance with the terms specified in the Agreement.

Sincerely,

A handwritten signature in cursive script that reads "Keith Mattson".

Keith Mattson
PHRL Project Manager
Office of the Vice President for Research
University of Hawaii

2800 Woodlawn Drive, Mānoa Innovation Center
Honolulu, Hawai'i 96822
Telephone: (808) 956-7490
Fax: (808) 956-8061

An Equal Opportunity/Affirmative Action Institution

AGREEMENT FOR SERVICES

This Agreement, effective the 20th day of March, 2012, is entered into between The Research Corporation of the University of Hawaii (hereinafter "RCUH"), a governmental agency of the State of Hawaii, whose address is 2800 Woodlawn Drive, Suite 200, Honolulu, Hawaii 96822, for the benefit of The Pacific Health Research Lab at Kalaeloa, (hereinafter "Project") and Bright Light Marketing Group, Inc., (hereinafter "CONTRACTOR"), a Corporation, under the laws of the State of Hawaii, whose business address and tax identification number are as follows: 1001 Bishop Street, Suite 900, Honolulu, Hawaii 96813. Federal Tax ID #99-0224145. Hawaii State Tax ID #W20355098-01.

RECITALS

- A. RCUH is in need of the services described in this Agreement and its attachments.
- B. RCUH desires to retain and engage the CONTRACTOR to provide the services, and the CONTRACTOR is agreeable to providing said services.

NOW, THEREFORE, in consideration of the promises contained in this Agreement, RCUH and the CONTRACTOR agree as follows:

1. Scope of Services. The CONTRACTOR shall, in a proper and satisfactory manner as determined by RCUH, provide all the services set forth in Attachment 1, which is hereby made a part of this Agreement.
2. Time of Performance. The services required of the CONTRACTOR under this Agreement shall be performed and completed in accordance with the "Time Schedule" set forth in Attachment 2, which is hereby made a part of this Agreement.
3. Compensation. The CONTRACTOR shall be compensated for services rendered and costs incurred under this Agreement according to the "Compensation and Payment Schedule" set forth in Attachment 3, which is hereby made a part of this Agreement.
4. Standards of Conduct Declaration. The Standards of Conduct Declaration by CONTRACTOR, set forth in Attachment 4, is hereby made a part of this Agreement.
5. Other Terms and Conditions. The General Conditions and The Special Conditions if any, set forth in Attachments 5 and 6, are hereby made a part of this Agreement. In the event of a conflict between the General Conditions and the Special Conditions, the Special Conditions shall control.

IN WITNESS WHEREOF, RCUH and the CONTRACTOR have executed this Agreement effective as of the date first above written.

PROJECT AUTHORITY

By James Gaines 
Vice President for Research, University of Hawaii

Date

CONTRACTOR

By Lynette Lo Tom 
Its President & CEO
(Title)

Date 22 March 2012

RCUH

By Russell Chun 

Date 4/2/12

IV⁰⁰ SCOPE OF SERVICES
Attachment 1

The CONTRACTOR shall provide all services described in Request For Proposal for the provision of Public outreach Services dated January 31, 2012, and all services not defined as 'Optional Activities' in Bright Light Marketing Group, Inc. 's Proposal dated February 21, 2012. These services define how CONTRACTOR will develop and coordinate a highly effective public outreach program for the PROJECT that includes:

- A series of facilitated public outreach meetings about the PROJECT, for which the CONTRACTOR will make all necessary meeting arrangements, prepare individual strategies for specific meetings and audiences, facilitate and record minutes from the meetings, and provide follow up services as requested by University
- In cooperation with University personnel assigned to the PROJECT, provide timely responses to information requests from groups and individuals interested in the PROJECT
- Prepare periodic briefings to organizations and individuals about the PROJECT
- Advise University officials and the PROJECT development team of other consultants about specific issues and concerns raised by groups and individuals about the PROJECT
- Identify PROJECT related stories, facts, and people that are newsworthy and, in consultation with the University, pitch stories to the media, arrange for editorial board meetings, and other actions that can produce positive and informative press coverage for the PROJECT
- Prepare and update current, complete, and accessible information on the PROJECT for business and community groups, the media, state and local officials, and the general public
- Develop and manage PROJECT website for University to host on University's existing website

The CONTRACTOR must work collaboratively with University administrators, faculty and staff, and with the University's partners in this project, including the State of Hawaii, the National Institutes of Health, the Hawaii Army National Guard, the US Army Corps of Engineers, and private sector companies.

TIME SCHEDULE
Attachment 2

Services performed under this Agreement shall begin on March 19, 2012 and end no later than January 31, 2013 unless extended by mutual agreement.

COMPENSATION AND PAYMENT SCHEDULE
Attachment 3

The total amount of compensation for services performed under this AGREEMENT shall not exceed \$124,500.00, including all required taxes, reimbursable expenses, and other expenses incurred in order to accomplish the Scope of Work.

The CONTRACTOR shall invoice the PROJECT monthly for fees not to exceed Twelve Thousand Four Hundred and Fifty Dollars (\$12,450.00) for all services rendered and costs incurred under this Agreement.

CONTRACTOR acknowledges that CONTRACTOR is solely responsible for compensating and reimbursing Pat Lee Associates, Marketability, LLC and any other Subcontractors retained for services to be performed under this Agreement, and that only CONTRACTOR may submit invoices for compensation and reimbursement. Payment by the PROJECT is subject to a monthly submission, in duplicate, of a properly executed original invoice for the previous month's work and monthly progress report, indicating contract number to:

Keith Mattson
PacRBL Project Manager
Office of the Vice President for Research
University of Hawaii
Suite 201, Manoa Innovation Center
2800 Woodlawn Drive
Honolulu, HI 96822

STANDARDS OF CONDUCT DECLARATION
Attachment 4

For the purposes of this declaration:

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employee under contract to the State or of the Constitutional Convention, but excluding legislators, delegates to the Constitutional Convention, justices and judges.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.


On behalf of Bright Light Marketing Group, Inc., CONTRACTOR, the undersigned does declare, under penalty of perjury, as follows:

1. CONTRACTOR is not a legislator or an employee or a business in which a legislator or an employee has a "controlling interest".
2. CONTRACTOR has not been assisted or represented by a legislator or employee for a fee or other compensation to obtain this Agreement and will not be assisted or represented by a legislator or employee for a fee or other compensation in the performance of the Agreement, if the legislator or employee had been involved in the development or award of the Agreement.
3. CONTRACTOR has not been assisted or represented for a fee or other compensation in the award of this Agreement by a RCUH employee, or in the case of the Legislature, by a legislator.
4. CONTRACTOR has not been represented or assisted personally on matters related to the Agreement by a person who has been an employee of the RCUH within the preceding two years and who participated while in state office or employment on the matter with which the contract is directly concerned.
5. CONTRACTOR has not been represented or assisted on matters related to the Agreement, for a fee or other consideration by an individual who, within the past twelve months, has been a RCUH employee.
6. CONTRACTOR has not been represented or assisted in the award of this Agreement for a fee or other consideration by an individual who, (a) within the past twelve months, served as a RCUH employee, and (b) participated while an employee on matters related to this Agreement.

CONTRACTOR understands that the Agreement to which this document is attached is voidable on behalf of the RCUH if this Agreement was entered into in violation of any provision of chapter 84, Hawaii Revised Statutes, commonly referred to as the 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 RCUH.

Dated: March 19, 2012.

CONTRACTOR



By Lynette Lo Tom

President & CEO
Its (Title)

GENERAL CONDITIONS
FOR SERVICES AGREEMENTS
Attachment 5

1. Coordination of Services by the State. RCUH, or RCUH's designee, shall coordinate the services to be provided by the CONTRACTOR in order to complete the Project. The CONTRACTOR shall maintain communications with RCUH, or RCUH designee, at all stages of the CONTRACTOR's work, and submit to RCUH or RCUH designee, for resolution, any questions which may arise as to the performance of this Agreement.
2. Relationship of Parties; Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Agreement, the CONTRACTOR shall be 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, RCUH shall have a general right to inspect work in progress to determine whether in RCUH's opinion, the services are being performed by the CONTRACTOR in accordance with the provisions of this Agreement. It is understood that RCUH 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 to RCUH.
 - b. The CONTRACTOR and the CONTRACTOR's employees and agents, shall not be considered agents or employees of RCUH for any purpose, and the CONTRACTOR's employees and agents shall not be entitled to claim or receive from the RCUH any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to RCUH employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of its performance under this Agreement. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability (if such liability is determined to exist) to the CONTRACTOR's employees and agents, and to any individual not a party to this Agreement, 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 Agreement, including but not limited to (i) income taxes, (ii) employment related fees, assessments and taxes, and (iii) general excise taxes. The CONTRACTOR is further responsible for obtaining all licenses, permits, and certificates that may be required by reason of this Agreement, including but not limited to a general excise tax license from the Department of Taxation, State of Hawaii.
 - e. The CONTRACTOR shall be responsible for securing any and all insurance coverage for the CONTRACTOR and the CONTRACTOR's employees and agents which is or may be required by law. The CONTRACTOR shall further be responsible for payment of all premiums, costs and other liabilities associated with securing said insurance coverage.

3. Personnel Requirements.
 - a. The CONTRACTOR shall secure, at the CONTRACTOR's own expense, all personnel required to perform the services required by this Agreement.
 - b. The CONTRACTOR shall ensure that the CONTRACTOR's employees or agents are experienced and fully qualified to engage in the activities and services required under this Agreement, and that all applicable licensing and operating requirements imposed or required under federal, state or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.
4. Nondiscrimination. No person performing work under this Agreement, 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. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR's duties, obligations, or interests under this Agreement without the prior written consent of RCUH. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR's right to compensation under this Agreement shall be effective unless and until the assignment is approved by RCUH.
6. Conflict of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, which would or might conflict in any manner or degree with the performance of the CONTRACTOR's services under this Agreement.
7. Modifications of Agreement. Any modification, alteration, amendment, change, or extension to any term, provision, or condition of this Agreement shall be made only by written amendment to this Agreement, signed by the CONTRACTOR and RCUH.
8. Suspensions and Termination of Agreement.
 - a. RCUH reserves the right at any time and for any reason to suspend this Agreement for any reasonable period, upon written notice to the CONTRACTOR. Upon receipt of said notice, the CONTRACTOR shall immediately comply with said notice and suspend all work under this Agreement at the time stated.
 - b. If, for any cause, the CONTRACTOR breaches this Agreement by failing to satisfactorily fulfill in a timely or proper manner the CONTRACTOR's obligations under this Agreement or by failing to perform any of the promises, terms, or conditions of this Agreement, and having been given reasonable notice of and opportunity to cure such default, fails to take satisfactory corrective action within the time specified by the RCUH, the RCUH shall have the right to terminate this Agreement by giving written notice to the CONTRACTOR of such termination at least seven (7) calendar days before the effective date of such terminating. Furthermore, RCUH may terminate this Agreement without statement of cause at any time by giving written notice to the CONTRACTOR of such termination at least thirty (30) calendar days before the effective date of such termination.

- c. Upon termination of the Agreement, the CONTRACTOR shall, within four (4) weeks of the effective date of such termination, compile and submit in an orderly manner to RCUH an accounting of the work performed up to the effective date of termination. In such event, the CONTRACTOR shall be paid for the actual cost of the services rendered, but in no event more than the total compensation payable to the CONTRACTOR under this Agreement.
- d. In the event of termination of either type, or in the event of the scheduled expiration of the time of performance specified in this Agreement, all finished or unfinished material prepared by the CONTRACTOR shall, at RCUH's option, become RCUH's property and, together with all material, if any, provided to the CONTRACTOR by RCUH, shall be delivered and surrendered to RCUH on or before the expiration date or date of termination. For the purposes of this Agreement, "material" includes, but is not limited to any information, data, reports, summaries, tables, maps, charts, photographs, films, graphs, studies, recommendations, program concepts, titles, scripts, working papers, files, models, audiotapes, videotapes, computer tapes, cassettes, diskettes, documents, and records developed, prepared, or conceived by the CONTRACTOR in connection with this Agreement, or furnished to the CONTRACTOR by RCUH. The terms do not include records which are maintained by RCUH solely for the CONTRACTOR's own use and which have only an ancillary relationship to the services provided under this Agreement.
- e. If this Agreement is terminated for cause, the CONTRACTOR shall not be relieved of liability to RCUH for damages sustained because of any breach by the CONTRACTOR of this Agreement. In such event, RCUH may retain any amounts which may be due and owing to the CONTRACTOR until such time as the exact amount of damages due to the RCUH from the CONTRACTOR has been determined. RCUH may also set off any damages so determined against the amounts retained.
9. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be from time to time, which in any way affect the CONTRACTOR's performance of this Agreement.
10. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and save harmless RCUH, its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefor, arising out of or resulting from the malicious, reckless, or negligent acts or omissions of the CONTRACTOR or the CONTRACTOR's employees, officers, agents, or subcontractors occurring during or in connection with the performance of the CONTRACTOR's services under this Agreement. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Agreement.
11. Disputes. No dispute arising under this Agreement may be sued upon by the CONTRACTOR until after the CONTRACTOR's written request to RCUH to informally resolve the dispute is rejected, or until ninety days after RCUH's receipt of the CONTRACTOR's written request, whichever comes first. While RCUH considers the CONTRACTOR's written request, the CONTRACTOR agrees to proceed diligently with the provision of services necessary to complete the Project.
12. Confidentiality of Material.

- a. All material given to or made available to the CONTRACTOR by virtue of this Agreement, 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 RCUH.
 - b. All information, data, or other material provided by the CONTRACTOR to RCUH shall be kept confidential only to the extent permitted by law.
13. Ownership Rights and Copyright. RCUH shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement, and all such material shall be considered "works made for hire". All such material shall be delivered to the RCUH upon expiration or termination of this Agreement. RCUH, at its discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Agreement. The CONTRACTOR, however, reserves the right to use thereafter any ideas and techniques that may be developed during the performance of this Agreement.
 14. Publicity. The CONTRACTOR shall not refer to RCUH, or any project, office, agency, or officer thereof, or to the services provided pursuant to this Agreement, in any of the CONTRACTOR's brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts to the CONTRACTOR about this Agreement shall be referred to RCUH.
 15. Payment Procedures: Final Payment. All payments under this Agreement shall be made only upon submission by CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Agreement have been performed by CONTRACTOR according to the Agreement.
 16. Tax Clearance. Final payment under this Agreement shall be subject to Section 103-53, Hawaii Revised Statutes, which requires a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service stating that all delinquent taxes, if any, levied or accrued against the CONTRACTOR have been paid. A tax clearance is required on final payment for agreements \$25,000 or more.
In addition to tax clearance prior to final payment, the CONTRACTOR is required to obtain a tax clearance from the Internal Revenue Service and State Department of Taxation prior to execution of this contract for all agreements \$25,000 or more.
 17. Governing Law. The validity of this Agreement and any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Agreement shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
 18. Notices. Any written notice required to be given by a party to this Agreement shall be (a) delivered personally, or (b) sent by United States first class mail, postage prepaid, to RCUH at its address and to the CONTRACTOR at its address as indicated in the Agreement. A notice shall be deemed to have been received by the recipient three (3) days after mailing or at the time of actual receipt, whichever is earlier.

19. Severability. In the event that any provision of this Agreement is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Agreement.
20. Waiver. The failure of RCUH to insist upon the strict compliance with any term, provision or condition of this Agreement shall not constitute or be deemed to constitute a waiver or relinquishment of RCUH's right to enforce the same in accordance with this Agreement.
21. Federal Provisions. If federal funds are expended under this contract, the CONTRACTOR shall comply with the applicable provisions of Attachment 32a.

SPECIAL CONDITIONS
Attachment 6

From: Keith Amemiya **Sent:** Tuesday, July 10, 2012 4:31 PM **To:** Artemio Baxa ; Barry Mizuno (mizunob@hawaii.edu); Benjamin Kudo (bkudo@hawaii.edu); Carl A. Carlson, Jr.; Chuck Y Gee; Coralie Matayoshi; Eric Martinson; James H. Q. Lee ; Jan Sullivan; Jeffrey Acido; John Dean (john.dean@hawaii.edu); John Holzman; Michael Dahilig; Saedene Ota; Tom Shigemoto (tom.shigemoto@hawaii.edu) **Cc:** Leila Wai; Ivy Yagi; Karen Shimizu **Subject:** Stevie Wonder Concert

Dear Regents:

Please see the following Honolulu Star-Advertiser story regarding the August 18 Stevie Wonder concert:

<http://www.staradvertiser.com/news/breaking/162014455.html?id=162014455>

You will be further briefed on this matter at next week's Board Meeting during executive session.

In the meantime, please do not hesitate to contact Chair Martinson or me if you have any questions.

Thanks.

Keith

Keith Y. Amemiya, Esq.
Executive Administrator and
Secretary of the Board of Regents
University of Hawaii
2444 Dole St., Bachman 209
Honolulu, HI 96822

(808) 956-8213 (business)
(808) 956-5156 (facsimile)

keith.amemiya@hawaii.edu

From: Keith Amemiya

Sent: Wednesday, July 11, 2012 4:23 PM

To: 'Artemio Baxa '; 'Barry Mizuno (mizunob@hawaii.edu)'; 'Carl A. Carlson, Jr.'; 'Coralie Matayoshi'; 'Chuck Y Gee'; 'Eric Martinson'; 'James H. Q. Lee '; 'Jan Sullivan'; 'John Holzman'; 'Michael Dahilig'; 'Saedene Ota'; 'john.dean@hawaii.edu'; 'bkudo@hawaii.edu'; 'tom.shigemoto@hawaii.edu'; 'Jeffrey Acido'

Cc: Darolyn H. Lendio; Leila Wai; Ivy Yagi; Karen Shimizu

Subject: Stevie Wonder Concert Situation - CONFIDENTIAL

Importance: High

Dear Regents:

President Greenwood has already spoken to some of you and will be contacting the rest of you shortly regarding the above situation.

Decisive action has already been taken and a press conference regarding this situation is being held at 4:30 p.m. at UH-Manoa's Hawaii Hall.

Should you have any questions, please do not hesitate to contact Eric or me.

Keith

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