



LEGAL SERVICES AGREEMENT

This AGREEMENT is made effective this 24th day of September, 2013, between **FREDERICK J. HORECKY** (“Attorney”), Law Offices of Horecky & Associates, whose address is 643 Chalan San Antonio, Suite 102B, Tamuning, Guam 96913, and the **PUBLIC UTILITIES COMMISSION** (the “Commission” or the “Purchasing Agency”), whose address is Suite 207, GCIC Building, 414 W. Soledad Avenue, Hagåtña, Guam 96910.

RECITALS

WHEREAS, the Commission is empowered pursuant to Title 12, Guam Code Annotated, Chapter 12, to retain those professional services required by the Commission in the performance of its duties.

WHEREAS, the Commission has the authority pursuant to Title 12, Guam Code Annotated, Section 12002(b) to appoint an attorney who shall serve at the pleasure of the Commission, and whose duties and compensation shall be determined by the Commission.

WHEREAS, on June 19, 2013, and pursuant to the Guam Procurement Law codified at Title 5, Guam Code Annotated, the Commission, as Purchasing Agency, issued a Request for Proposals for Legal Services (“RFP No. 001-FY13”).

WHEREAS, Attorney responded to RFP No. 001-FY13 and was determined by the head of the Purchasing Agency or a designee that the award of a contact under RFP No. 001-FY13 should be made to Attorney as being one of the most qualified offerors as determined by evaluating experience and other relevant factors.

NOW THEREFORE, the Commission and Attorney in consideration of the premises and the mutual covenants hereinafter set forth, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION ONE SCOPE OF SERVICES

Attorney agrees to serve in the capacity as counsel to the Commission to fully and competently perform the following scope of services:

1. Act as legal counsel to the Commission.
2. Undertake such legal research as shall be requested by the Commission or their designee(s).
3. Represent the Commission in litigation matters.

4. Represent the Commission at public hearings, before the Guam Legislature and Government of Guam boards or agencies in matters.
5. Provide special services as requested by the Commission.
6. Other Tasks: The Commission may require other related tasks not specified above.

Attorney agrees that in no instance shall it represent the interest of any person, natural or legal, against the Commission in any court action.

SECTION TWO CONTRACT TERM

The term of this Contract shall commence upon the execution hereof and continue for one (1) year with four (4) options to extend for a period of one year each, not to exceed a total contract period of five (5) years with Commission approval. Any reference to year in this agreement shall mean a twelve month period. This agreement may be terminated by either party upon 30 days written notice.

SECTION THREE COMPENSATION

The Commission shall compensate Attorney according to its hourly rate schedule, attached hereto as "**Exhibit A,**" for actual time devoted to performing the above-enumerated services. Attorney's monthly billings shall not exceed the sum of \$20,000.00 per month without prior approval or subsequent ratification by the Certifying Officer of the Commission.

Attorney shall invoice the Commission for payments on a monthly basis and shall be required to provide a record of hours worked and the description of work. The Commission's obligation for payment of attorneys' fees and costs shall be subject to the availability of funds for such payment.

The Commission will closely monitor the performance of work by the Attorney and the Commission has determined that it would not be practical to use any other type of contract to obtain the needed services. Attorney agrees that he shall not receive any of the benefits given full-time non-contractual employees of the Government of Guam.

SECTION FOUR REIMBURSEMENT OF EXPENSES

The Commission shall reimburse Attorney for the following expenses if incurred on behalf of the Commission:

1. Travel, food, lodging, and other related traveling expenses, provided the prior approval of the Commission is obtained for such travel and provided further that reimbursement for such travel expenses shall be pursuant to the Commission's policy and rates for per diem compensation;

2. Whenever the Attorney finds it necessary to obtain any specialized services not normally retained by the Attorney, the Attorney and the Commission together shall determine first that the acquisition of such services by the Attorney will not circumvent the Guam Procurement Law. The determination shall be made by reviewing the scope of services needed for their degree of specialization and the purpose of the services. If the Guam Procurement Law will be circumvented, then acquisition must be undertaken by the Commission. However, in the case of specialized services related to litigation, the Attorney may contract directly for such services, except for legal services which must always be procured by the Commission. The costs and fees associated with the specialized services may at the Commission's election, be paid directly to such specialists or to Attorney as reimbursement;

3. Process servers' fees, court reporters' fees, long distance telephone calls, messenger and delivery fees, postage, photocopying, parking, and other similar items customarily paid for by clients.

4. Any other expenses provided that the prior approval of the Commission has been obtained; and

5. Any other expenses that although the prior approval of the Commission was not obtained, the Commission determines to have been beneficial and justified.

Attorney shall provide vouchers and receipts, together with a brief explanation of such expenses that it has incurred for the benefit of the Commission.

SECTION FIVE

COMPLIANCE WITH LAWS AND REGULATIONS

In performing the work provided for herein, Attorney agrees to fully comply with any and all applicable laws, rules, and regulations adopted or promulgated by any governmental agency or regulatory body, both territorial and federal. Attorney assumes fully responsibility for the payment of all contributions, payroll taxes, or assessments, territorial or federal, and further agrees to meet all requirements that may be specified under regulations of administrative officials or bodies charged with enforcement of any territory or federal laws on this subject.

SECTION SIX
ACCESS TO RECORDS

Attorney shall maintain all books, documents, papers, accounting records, and other evidence concerning the expenses and costs incurred by Attorney's performance and shall make such material available to the Commission or its designee(s) for inspection and copying upon request during the term of this Agreement.

SECTION SEVEN
FINAL PAYMENT AND RELEASE OF CLAIMS

Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under this agreement. Prior to final payment, as a condition precedent thereto, Attorney shall execute and deliver to the Commission a release, in a form approved by the Commission, of claims against the Commission arising under by virtue of this agreement.

SECTION EIGHT
INDEPENDENT AGENT

For the purpose of the Government Claims Act, Public Law 17-29, the Attorney shall not be considered an agent of the Department of Law of the Territory of Guam with respect to any acts performed by it in connection with the discharge of the duties of this contract. There shall be no employee benefits provided under this contract, such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the Commission. Attorney contracts herein with Commission as an independent contractor, and is neither an employee nor an agent of the Commission for the purpose of performing the services hereunder. The Commission therefore assumes no responsibility of liability for the acts of Attorney which are performed in its independent and professional capacity.

SECTION NINE
RESPONSIBILITY OF ATTORNEY

Attorney shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. Attorney shall, without additional cost to the Commission, correct or revise all errors or deficiencies in his/her work. The Commission's review, approval, acceptance of, and payment of fees for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of Attorney's failure to the Commission for all costs of any kind which may be incurred by the Commission as a result of Attorney's negligent performance of any of the services performed under this contract.

SECTION TEN
ASSIGNMENT OF AGREEMENT

Attorney may not assign this agreement, or any sum becoming due under the provisions of this Agreement without the prior written consent of the Commission.

SECTION ELEVEN
GENERAL COMPLIANCE WITH LAWS

Attorney shall be required to comply with all Federal and Territorial laws and ordinances applicable to this work. Attorney has provided the Commission with a copy of its Statement of Exemption pursuant to Section 16024 of the Government Code.

SECTION TWELVE
ACCESS TO RECORDS AND OTHER REVIEW

Attorney, including his subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence operating to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Commission. Each subcontract by Attorney pursuant to this Agreement shall include a provision containing the conditions of this Section.

SECTION THIRTEEN
OWNERSHIP OF DOCUMENTS

All briefs, memoranda and other incidental work of Attorney or materials furnished hereunder shall be and remain the property of the Commission including all publication rights and copyright interests, and may be used by the Commission without any additional costs to the Commission.

SECTION FOURTEEN
CHANGES IN SCOPE OF WORK AND SERVICES

14.1 Commission Initiated

The Commission may, at any time, by written order, make changes to general scope of this contract in the services to be performed. Attorney shall not make any changes to the general scope without the written approval of the Commission.

If such changes cause an increase or decrease in the Attorney's cost of, or time required for, performance of any services under this Agreement, the Agreement shall be modified in writing accordingly. Any claim for adjustment under this section must be made in writing to the Commission within thirty (30) days from the date of receipt by the

Attorney of the notification of change; provided, however, the Commission, if it determines the facts justify such action, may receive and consider and adjust any such claim asserted at any time prior to the date of final settlement of the Agreement. Nothing provided in this section shall excuse Attorney from diligently proceeding with the work so charged.

14.2 Initiated by Attorney

If the Attorney believes that a change in the scope of services is necessary and desirable to the furtherance of the interest of the project under this Agreement, the Attorney shall make a request, in writing, for the Commission to issue a Change Order. Such requests for Change Order shall include the proposed change in scope of services, as well as the proposed change in compensation and/or schedule associated with granting such a Change Order. The Commission shall, in response to such request for Change Order, utilize the same options as stated above.

SECTION FIFTEEN TERMINATION

Either of the parties hereto may, by written notice to the other, terminate this Agreement in whole or in part upon thirty (30) days written notice either for convenience or default. Upon such termination, all briefs, reports, summaries, completed work and work in progress, and such other information and materials as may have been accumulated by the Attorney in performing this Agreement shall, in the manner to the extent determined by the Commission, become the property of and be delivered to the Commission. If the contract is terminated by the Attorney or by the Commission for cause, prior to its completion, Attorney shall reimburse the Commission for any travel costs associated with this contract and the Commission may retain as set-off for such expenses any funds owed to Attorney in the Commission's possession.

SECTION SIXTEEN SEVERABLE PROVISIONS

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions.

SECTION SEVENTEEN GOVERNING LAW

Venue of any action brought under this Agreement shall lie in the Territory of Guam exclusively. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the Territory of Guam.

SECTION EIGHTEEN
COMMISSION NOT LIABLE

The Commission assumes no liability for any accident or injury that may occur to Attorney, his or her agents, dependents, or personal property while en route to or from this territory or during travel mandated by the terms of this Agreement.

SECTION NINETEEN
APPROVALS

Any approvals required herein by the Commission shall mean approval by the Public Utilities Commission is required unless another person is designed by the Commission to issue particular or limited approvals on certain matters.

SECTION TWENTY
CONFLICTS

Attorney agrees to disclose to the Commission any possible conflict of interest that may arise in representing the Commission's interest, and obtain a written waiver from the Commission regarding its conflict. Should any possible conflict of interest arise, Attorney agrees not to disclose or otherwise use any matters learned from the Commission to the disadvantage of the Commission.

SECTION TWENTY-ONE
INTEREST OF THE ATTORNEY

Attorney covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Attorney further covenants that in the performance of this Agreement, no person having such interest shall be employed.

SECTION TWENTY-TWO
GUAM TAX

Attorney is responsible for payment of all applicable Guam Taxes.

SECTION TWENTY-THREE
NO WAIVER OF LEGAL RIGHTS

No waiver of any breach of the Agreement shall be held to be a waiver of any other or subsequent breach, or of any right that the Commission may have for damages. Each party reserves the right to correct any error that may be discovered in any invoice that may

have been paid to Attorney and to adjust the same to meet the requirements of the Agreement.

SECTION TWENTY-FOUR
SUCCESSORS AND ASSIGNS

Subject to the limitations on assignment and transfer herein contained, this Agreement shall be binding upon, and inure to, the benefit of the parties hereto, their respective successors and assigns.

SECTION TWENTY-FIVE
BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Attorney or his subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

SECTION TWENTY-SIX
COVENANT AGAINST CONTINGENT FEES

Attorney warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Attorney to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Attorney, any fee, commission, percentage, brokerage fee, gifts or any other consideration, contingent upon or resulting from the award or making of this Agreement.

For breach or violation of this warranty, the Commission shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the contract price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

SECTION TWENTY-SEVEN
INFORMATION TO BE FURNISHED TO ATTORNEYS

All information, data, reports, and records as are existing, available, and in the Commission's custody, and necessary for the carrying out of the services shall be furnished to Attorney without charge by the Commission, and the Commission shall cooperate with Attorney in every reasonable way during all phases of the project.

SECTION TWENTY-EIGHT
WARRANTY AGAINST EMPLOYMENT
OF SEX OFFENDERS (PUBLIC LAW 28-98:2)

Attorney warrants that no person providing services on behalf of Attorney has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry.

If any person providing services on behalf of Attorney is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will immediately be removed from working at said agency and that the administrator of said agency be informed of such removal within twenty-four (24) hours of such conviction.

SECTION TWENTY-NINE
COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile transmission and such facsimile shall be valid and binding to the same extent as if it was an original.

SECTION THIRTY
ENTIRE AGREEMENT

This Agreement and exhibits or attachments hereto constitute the entire agreement between the parties, and no prior or contemporaneous written or oral promises, representations or assurances shall be deemed to alter the provisions hereof. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the retention of Attorney by the Commission and contains all of the covenants and agreements between the parties with respect to such retention in any manner whatsoever. Each party to this agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

SECTION THIRTY-ONE

NOTICES

Notices to either party will be sent to:

Public Utilities Commission
Suite 207, GCIC Building
414 W. Soledad Avenue
Hagåtña, Guam 96910

Frederick J. Horecky, Esq.
LAW OFFICES OF HORECKY & ASSOCIATES
643 Chalan San Antonio, Suite 102B
Tamuning, Guam 96913

[SIGNATURES CONTINUED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates indicated below their respective signatures.

ATTORNEY:

**PURCHASING AGENCY:
PUBLIC UTILITIES COMMISSION**

By: *Frederick J. Horecky*
FREDERICK J. HORECKY

By: *[Signature]*

Date: 9/24/13

Date: 9/24/13

CERTIFIED FUNDS AVAILABLE:

By: *[Signature]*
PUC CERTIFYING OFFICER

Date: 9/24/13

**APPROVED AS TO FORM:
OFFICE OF THE ATTORNEY
GENERAL OF GUAM**

By: *[Signature]*
LEONARDO M. RAPADAS
Attorney General of Guam

Date: 1/10/14

PUC 13-0708

received
11/18/13 *[initials]*

EXHIBIT A

HOURLY RATE SCHEDULE

The LAW OFFICES OF HORECKY & ASSOCIATES shall provide all services indicated in this Agreement at the hourly rate of One Hundred and Seventy Five Dollars (\$175.00) per hour.