

CONSULTANT SERVICES AGREEMENT

This AGREEMENT is made effective this _____ day of February, 2011, between SHAW CONSULTANTS INTERNATIONAL INC. (“Consultant”), whose address is 1430 Enclave Parkway, Houston, TX 77077, and the PUBLIC UTILITIES COMMISSION (the “Commission” or the “Purchasing Agency”), whose address is Suite 207, GCIC Building, 414 W. Soledad Avenuc, 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 a consultant who shall serve at the pleasure of the Commission, and whose duties and compensation shall be determined by the Commission.

WHEREAS, on July 28, 2011, 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 Consultant Services (“RFP No. 11-01”).

WHEREAS, Consultant responded to RFP No. 11-01 and was determined by the head of the Purchasing Agency or a designee that the award of a contact under RFP No. 11-01 should be made to Consultant as being one of the most qualified offerors as determined by evaluating experience and other relevant factors.

NOW THEREFORE, the Commission and Consultant 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

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

1. The Consultant has background in, and knowledge concerning, the operation of water and power utilities, including technical and engineering aspects of utility operations. Consultant is familiar with the regulatory process for utilities such as GWA and GPA, and has direct experience in advising public utility commission(s).
2. The Consultant has specific background in, and knowledge concerning, the rate setting process for public utilities and with matters related to regulatory

compliance; Consultant is familiar with rate setting, rate analysis, review of economic and financial data, review and analysis of bond financing, and possesses regulatory accounting skills.

3. The Consultant will provide the Commission with consultation services and advice regarding the above matters, and review and recommendations concerning existing rates, charges and costs of service. The Commission may also seek advice from the Consultant concerning the establishment and/or modification of rates, charges and costs of service.
4. The Consultant shall assist the Commission in reviewing, evaluating, and recommending actions to be taken by the Commission with regard to its regulatory oversight supervision of GWA and GPA. Specific tasks to be performed may include the following:
 - (a) act as a Consultant to the Commission for services related to the review of GWA/GPA financial records, accounting information, and rate filings.
 - (b) as requested, to examine and review any documents or information related to GWA/GPA rate proceedings or other regulatory matters, including information submitted (“standard filing requirements”) in applications for change of rates; such review may include, but is not limited to, the following: GWA/GPA revenue requirements, income statements, operating expenses, operating income, interest, depreciation, other revenues and expenses, and net income; cash flow statements, forecasted results of operations, customer and sales data, revenue by customer class, internal labor costs, analysis of proposed bond issues and/or loan agreements, payment terms and schedules, and calculations of working capital.
 - (c) analyze such information or records of GWA/GPA and provide opinion(s) to the Commission; specifically, Consultant may be requested to carefully and closely scrutinize the figures and calculations presented by GWA or GPA, their accountants and/or consultants, and to determine whether the figures, calculations, schedules, or assumptions presented and relied upon are accurate and correct.
 - (d) verify the financial and accounting accuracy of any records or information submitted by GWA and/or GPA.
 - (e) determine whether such GWA and/or GPA accounting and financial records are submitted in accordance with applicable, and generally accepted, accounting and regulatory principles

and procedures, and, where applicable, with any required federal regulatory authority.

5. Consultant shall provide such other special services as requested by the Commission and the Commission may require other related tasks not specified above.

SECTION TWO **CONTRACT TERM**

The term of this Agreement shall commence upon the execution hereof and continue for one (1) year with four (4) options to automatically extend the term for a period of one year each, not to exceed a total Agreement 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 Consultant at the hourly rate of \$216.00 per hour for actual time devoted to performing the above-enumerated services by such person or persons qualified to provide the services hereunder. Attached hereto as Exhibit "A" is a listing of those individuals who will perform services hereunder. Consultant's monthly billings shall not exceed the sum of Forty Thousand Dollars (\$40,000.00) per month, exclusive of reimbursable travel expenses, without prior approval or subsequent ratification by the Certifying Officer of the Commission.

Consultant 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 Consultant's 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 Consultant and the Commission has determined that it would not be practical to use any other type of contract to obtain the needed services. Consultant 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 Consultant 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; air travel from Boston, Mass. To Guam shall business class.

2. Whenever the Consultant finds it necessary to obtain any specialized services not normally retained by the Consultant, the Consultant and the Commission together shall determine first that the acquisition of such services by the Consultant 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 Consultant 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 Consultant as reimbursement;

3. 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.

Consultant 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, Consultant 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. Consultant 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

Consultant shall maintain all books, documents, papers, accounting records, and other evidence concerning the expenses and costs incurred by Consultant's performance and shall make such material available to the Commission or its designee(s) for inspection

and copying upon request and reasonable advance notice 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, Consultant shall execute and deliver to the Commission a release, in a form approved by the Commission, of claims against the Commission, excluding possible claim for non-payment of the final payment, arising under by virtue of this Agreement.

SECTION EIGHT
INDEPENDENT AGENT

For the purpose of the Government Claims Act, Public Law 17-29, the Consultant shall not be considered an agent of the Commission with respect to any acts performed by it in connection with the discharge of the duties of this Agreement. There shall be no employee benefits provided under this Agreement, such as health or life insurance, retirement benefits, vacation leave or sick leave, and there shall be no withholding of taxes by the Commission. Consultant 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 Consultant which are performed in its independent and professional capacity.

SECTION NINE
RESPONSIBILITY OF CONSULTANT

Consultant shall be responsible for the professional and technical accuracy of all work and materials furnished under this Agreement. Consultant 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 Agreement, shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of Consultant's failure to the Commission for all costs of any kind which may be incurred by the Commission as a result of Consultant's negligent performance of any of the services performed under this Agreement.

SECTION TEN
ASSIGNMENT OF AGREEMENT

Consultant 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

Consultant shall be required to comply with all Federal and Territorial laws and ordinances applicable to this work. Consultant has provided the Commission with a copy of its current business license.

SECTION TWELVE
ACCESS TO RECORDS AND OTHER REVIEW

Consultant, 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 Agreement period and for three (3) years from the date of the final payment under the Agreement, for inspection by the Commission with advance written notice. Each subcontract by Consultant 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 Consultant 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. However, the following proprietary methodologies, procedures, information or tools are excluded from this paragraph: _____

_____. Such specified materials remain Consultant's property.

SECTION FOURTEEN
INDEMNITY

Consultant agrees to save and hold harmless the Commission, its officers, agents, representatives, successors and assigns and other governmental agencies from and all suits or actions of every nature and kind, which may be brought from or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Consultant, its officers, agents, servants or employees under this Agreement.

Commission agrees to save and hold harmless the Consultant, its officers, agents, representatives, successors and assigns from and all suits or actions of every nature and kind, which may be brought from or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Commission under this Agreement.

Each party's liability to the other party for any loss, cost, claim, injury, liability, or expense, including reasonable attorneys' fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damages actually incurred. In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind.

SECTION FIFTEEN

CHANGES IN SCOPE OF WORK AND SERVICES

15.1 Commission Initiated

The Commission may, at any time, by written order, make changes to general scope of this Agreement in the services to be performed. Consultant 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 Consultant'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 Consultant 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 Consultant from diligently proceeding with the work so charged.

15.2 Initiated by Consultant

If the Consultant 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 Consultant 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 SIXTEEN

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 Consultant 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. Upon any termination hereunder, Commission shall pay the full amount due

for Services rendered and expenses incurred and not paid through the date of termination, and the costs of returning Consultant personnel from Guam to home base and other reasonable costs and expenses incurred in effecting termination (including cancellation charges) and returning documents.

SECTION SEVENTEEN
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 EIGHTEEN
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 .

SECTION NINETEEN
COMMISSION NOT LIABLE

The Commission assumes no liability for any accident or injury that may occur to Consultant, 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 TWENTY
APPROVALS

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

SECTION TWENTY-ONE
CONFLICTS

Consultant 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, Consultant agrees not to disclose or otherwise use any matters learned from the Commission to the disadvantage of the Commission.

SECTION TWENTY-TWO
INTEREST OF THE CONSULTANT

Consultant 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. Consultant further covenants that in the performance of this Agreement, no person having such interest shall be employed.

SECTION TWENTY-THREE
GUAM TAX

Except for United States income or profits taxes imposed on Consultant, all payments due to Consultant hereunder shall be made free and clear of any present and future taxes, levies, imposts, deductions, charges, or withholdings of any nature whatsoever imposed, levied, collected, withheld or assessed by any governmental entity or authority ("Tax"). In the event any Tax is imposed on Consultant by the country in which Services are performed, the Tax shall be treated as an expense and Commission shall reimburse Consultant for the amount of the Tax so as to ensure that after payment of the Tax, the amount remitted to Consultant is the full amount due hereunder.

Consultant is responsible for payment of all applicable Guam Taxes.

SECTION TWENTY-FOUR
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 Consultant and to adjust the same to meet the requirements of the Agreement.

SECTION TWENTY-FIVE
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-SIX
BREACH OF CONTRACT TERMS

Any violation or breach of terms of this Agreement on the part of the Consultant or his subcontractors may result in the suspension or termination of this Agreement 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-SEVEN

COVENANT AGAINST CONTINGENT FEES

Consultant warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for Consultant 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 Consultant, 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-EIGHT
INFORMATION TO BE FURNISHED TO CONSULTANT**

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 Consultant without charge by the Commission, and the Commission shall cooperate with Consultant in every reasonable way during all phases of the project. Commission agrees that Consultant may rely upon the completeness and accuracy of all information supplied by Commission. If deficiencies are found by Consultant to be the result of using data supplied by Commission, Consultant agrees to re-perform its Services to correct such deficiency at its then-prevailing unit rates. Consultant's review of any information prepared by Commission or others, shall in no way serve to transfer to Consultant responsibility or liability for the accuracy, correctness, or timeliness of such information.

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

Consultant warrants that no person providing services on behalf of Consultant 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 Consultant 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 within twenty-four (24) hours of such conviction.

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 Consultant 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 is 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

Consultant:

Mr. James Dudley
Shaw Consultants International
1430 Enclave Parkway
Houston TX, 77077

SECTION THIRTY-TWO
FORCE MAJEURE

Consultant shall not be deemed in default of any provision hereof or be liable for any delay, failure in performance, or interruption of Service resulting directly or indirectly from a force majeure event, including but not limited to acts of God, civil or military authority, civil disturbance, war, terrorist attacks, strikes or other labor disputes, fires, other catastrophes, or other force, event or condition beyond its reasonable control, whether or not such event may be deemed foreseeable, and Consultant's time for performance hereunder shall be extended for a period of time reasonably necessary to overcome the effect of such delay.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

CONSULTANT:

**PURCHASING AGENCY:
PUBLIC UTILITIES COMMISSION**

Accepted by:
LRK [Signature]
Legal E&C

By: James A Dudley
Title: James A. Dudley
President
Date: FEB. 14, 2012

By: J. Johnson Chairman Guam PHU
Date: Feb. 22, 2012

ATTEST:

ATTEST:

By: _____
Name: _____
Title: _____
Date: _____

By: Armando R. Palomo
Administrator
Date: Feb 22, 2012

CERTIFIED FUNDS AVAILABLE:

By: [Signature]
PUC CERTIFYING OFFICER
Date: _____

**CONCURRED:
OFFICE OF THE GOVERNOR
OF GUAM**

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

By: _____
HON. EDDIE BAZA CALVO
Governor of Guam

By: _____
LEONARDO M. RAPADAS
Attorney General of Guam

Date: _____

Date: _____