



## ADMINISTRATIVE LAW JUDGE SERVICES AGREEMENT

This AGREEMENT is made effective this 24<sup>th</sup> day of SEPTEMBER, 2013, between **DAVID A. MAIR** and **JOEPHET R. ALCANTARA** (“ALJ”), whose address is 238 A.F.C. Flores Street, Suite 801, DNA Building, Hagåtña, Guam 96910, 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.

Either **DAVID A. MAIR** or **JOEPHET R. ALCANTARA** shall serve as ALJ at the discretion of the PUC.

### 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 administrative law judge who shall serve at the pleasure of the Commission, and whose duties and compensation shall be determined by the Commission.

**WHEREAS**, on June 26, 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 Administrative Law Judge Services (“RFP No. 02-FY2013”).

**WHEREAS**, the ALJ responded to RFP No. 02-FY2013 and was determined by the head of the Purchasing Agency or a designee that the award of a contract under RFP No.02-FY2013 should be made to the ALJ as being one of the most qualified offerors as determined by evaluating experience and other relevant factors.

**NOW THEREFORE**, the Commission and the ALJ 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

The ALJ agrees to serve in the capacity as administrative law judge to the Commission to fully and competently perform the following scope of services:

1. Act as administrative law judge to the Commission.

2. Have knowledge in and prepare opinions and rules, regulations and reports at the request of the Commission, or their designee(s) in:
  - (a) Matters relating and concerning the operation and purpose of the Commission;
  - (b) Matters relating to regulatory compliance and public utilities;
  - (c) Matters concerning administrative adjudication; and
  - (e) Matters pertaining to federal, regulatory or local statutes.
3. Serve as presiding officer in formal proceedings/hearings before the Commission.
4. Prepare cases for formal hearing before the Commission.
5. Issue subpoenas as authorized by statutes, rules, regulations or procedures.
6. Administer oaths or affirmations.
7. Assess witness testimony and rule on the admissibility and presentation of evidence.
8. Prepare proposed decisions for consideration by the Commission.
9. Conduct investigations into proposed rate changes or matters affecting the Commission.
10. Assist the Commission in reviewing, evaluating and recommending actions to be taken by the Commission.
11. Hold conferences to settle issues and mediate disputes between parties.
12. Provide special services as requested by the Commission.
13. Other Tasks: The Commission may require other related tasks not specified above.

The ALJ 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 the ALJ according to its hourly rate schedule, attached hereto as "**Exhibit A,**" for actual time devoted to performing the above-enumerated services. The ALJ'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.

The ALJ 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 the ALJ'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 ALJ and the Commission has determined that it would not be practical to use any other type of contract to obtain the needed services. The ALJ 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 the ALJ 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 ALJ finds it necessary to obtain any specialized services not normally retained by the ALJ, the ALJ and the Commission together shall determine first that the acquisition of such services by the ALJ 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 ALJ 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 the ALJ 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.

The ALJ 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, the ALJ 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. The ALJ assumes full 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**

The ALJ shall maintain all books, documents, papers, accounting records, and other evidence concerning the expenses and costs incurred by the ALJ'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, the ALJ 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 ALJ 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. The ALJ 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 the ALJ which are performed in its independent and professional capacity.

**SECTION NINE**  
**RESPONSIBILITY OF THE ALJ**

The ALJ shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. The ALJ shall, without additional cost to the Commission, correct or revise all errors or deficiencies in his 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 the ALJ's failure to the Commission for all costs of any kind which may be incurred by the Commission as a result of the ALJ's negligent performance of any of the services performed under this contract.

**SECTION TEN**  
**ASSIGNMENT OF AGREEMENT**

The ALJ 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**

The ALJ shall be required to comply with all Federal and Territorial laws and ordinances applicable to this work. The ALJ 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**

The ALJ, 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 the ALJ 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 the ALJ 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. The ALJ 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 ALJ'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 ALJ 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 the ALJ from diligently proceeding with the work so charged.

## **14.2 Initiated by the ALJ**

If the ALJ 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 ALJ 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 ALJ 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 ALJ or by the Commission for cause, prior to its completion, the ALJ 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 the ALJ 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 the ALJ, his 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**

The ALJ 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, the ALJ 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 ALJ**

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

**SECTION TWENTY-TWO**  
**GUAM TAX**

The ALJ 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 the ALJ 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 ALJ 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**

The ALJ warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the ALJ 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 the ALJ, 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 THE ALJ**

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 the ALJ without charge by the Commission, and the Commission shall cooperate with the ALJ in every reasonable way during all phases of the project.

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

The ALJ warrants that no person providing services on behalf of the ALJ 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 the ALJ 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 the 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 the ALJ 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

David A. Mair, Esq.  
Joephet R. Alcantara, Esq.  
238 A.F.C. Flores Street  
Suite 801, DNA Building  
Hagåtña, Guam 96910

**[SIGNATURES CONTINUED ON NEXT PAGE]**

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

**ADMINISTRATIVE LAW JUDGE:**

By: 

DAVID A. MAIR

Date: 9/24/13

By: \_\_\_\_\_

JOEPHET R. ALCANTARA

Date: \_\_\_\_\_

**ATTEST:**

By: 

Name: LOU R. PAZOMO

Title: Administrator

Date: 9/24/13

**PURCHASING AGENCY:  
PUBLIC UTILITIES COMMISSION**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**CERTIFIED FUNDS AVAILABLE:**

By: \_\_\_\_\_

**PUC CERTIFYING OFFICER**

Date: \_\_\_\_\_

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

By: \_\_\_\_\_

**LEONARDO M. RAPADAS  
Attorney General of Guam**

Date: \_\_\_\_\_

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

**ADMINISTRATIVE LAW JUDGE:**

**PURCHASING AGENCY:  
PUBLIC UTILITIES COMMISSION**

By: \_\_\_\_\_  
**DAVID A. MAIR**

By: [Signature]

Date: \_\_\_\_\_

Date: 9/24/13

By: [Signature]  
**JOEPHET R. ALCANTARA**

**ATTEST:**

Date: Sept. 24, 2013

By: [Signature]  
Date: 9/24/13

**ATTEST:**

**CERTIFIED FUNDS AVAILABLE:**

By: [Signature]  
Name: LOU R PALOMO  
Title: Administrator  
Date: 9/24/13

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: 2/10/14

PUC 13-0709  
**received**  
11.8.13

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**HOURLY RATE SCHEDULE**

- I. David A. Mair ..... \$175
- II. Joephet R. Alcantara. .... \$175

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**EXHIBIT A**