

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

**IN RE: PETITION TO APPROVE)
CONTRACT AMENDMENT)
AMENDMENT NO. 3)
WITH BROWN AND CALDWELL) GWA DOCKET 22-01
TO COMPLETE THE INTERIM) ALJ REPORT
WATER RESOURCE MASTER)
PLAN UPDATE)**



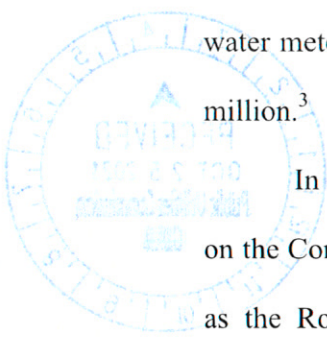
INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the Petition to Approve the Indefinite Delivery Indefinite Quantity (“IDIQ”) Contract Amendment No. 3, to Execute Task Order No. 8, with Brown and Caldwell to Complete the Interim Water Resource Master Plan Update (“WRMP”) (the “Petition”), filed by the Guam Waterworks Authority (“GWA”) on October 18, 2021.

BACKGROUND

In June 17, 2019, GWA entered into an “Owner-Engineer” [IDIQ] contract with Brown and Caldwell (also referred to herein as the “Engineer”) for Project Management and Construction Management services.¹ In August 21, 2020, the original contract was amended to include additional task orders, which involved, for instance: additional work in GWA’s Consulting Engineer’s Report; project management for GWA’s Route 1 and Route 4 Sewer Rehabilitation; a Cost of Service study; and technical assistance with GWA’s

¹ Petition to Approve the IDIQ Contract Amendment No. 3, to Execute Task Order No. 8, with Brown and Caldwell to Complete the Interim Water Resource Master Plan Update, p. 1 (Oct. 18, 2021).



water meters.² This amendment increased the total amount of the contract to around \$1.7 million.³

In September 30, 2020, this contract was amended again to include additional work on the Consulting Engineer's Report and extended work on the construction projects, such as the Route 1 and Route 4 Sewer Rehabilitation projects.⁴ This amendment added \$192,094 to the contract, resulting in a cost of over \$1.9 million for the entire contract.⁵

On May 25, 2021, the Consolidated Commission on Utilities (the "CCU") issued GWA Resolution No. 22-FY2021, which essentially approved a third amendment to the subject contract, adding Task Order No. 8; and further approved an additional \$328,946.00 to the contract.⁶

DISCUSSION

A. Review of GWA's ID/IQ Contract with Brown and Caldwell for Project Management and Construction Management Services

Pursuant to 12 G.C.A. §12105,⁷ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. Additionally, pursuant to GWA's Contract Review Protocol issued in Administrative Docket 00-04, "[a]ll professional service procurements in excess of

² Amendment to Owner-Engineer Agreement No. 1, pp. 1-2 (Aug. 21, 2020).

³ Amendment to Owner-Engineer Agreement No. 1, p. 1 (Aug. 21, 2020).

⁴ Amendment to Owner-Engineer Agreement No. 2, pp. 1-2 (Sept. 30, 2020).

⁵ Amendment to Owner-Engineer Agreement No. 2, p. 1 (Sept. 30, 2020).

⁶ GWA Resolution No. 22-FY2021, issued by the Consolidated Commission on Utilities, pp. 2-3 (May 25, 2021) (hereinafter referred to as the "Resolution").

⁷ Formerly 12 G.C.A. §121004.

\$1,000,000” require “prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun”⁸ GWA must also seek PUC’s approval for any uses of bond funds.⁹

B. GWA’s Request for Approval of Amendment No. 3, Task Order No. 8, Owner-Engineer Contract with Brown and Caldwell

In its Petition, GWA requests that the PUC authorize Amendment No. 3, to the June 17, 2019 Owner-Engineer contract with Brown and Caldwell for Project Management and Construction Management services. Amendment No. 3 would add Task Order No. 8, to the Engineer’s Scope of Work, which specifically tasks the Engineer with completing an update to GWA’s 2018 WRMP.¹⁰ GWA intends on completing this WRMP update, which will review GWA’s progress on system recommendations and capital improvement projects.¹¹ GWA also anticipates that certain work will be required in order to complete this WRMP update, particularly tasks required by a U.S. Environmental Protection Agency (“U.S. E.P.A.”) Consent Decree.¹²

GWA maintains that the cost for Task Order No. 8 (Amendment No. 3) is “\$328,946.00 with a ten (10%) contingency of \$32,895.000 increasing the Brown and

⁸ GWA’s Contract Review Protocol (“GWA CRP”), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁹ *Id.*

¹⁰ Petition, p. 2.

¹¹ Resolution, p. 1.

¹² Resolution, p. 1.

Caldwell PM/CM IDIQ contract by \$361,841.00.”¹³ GWA further maintains that “Task Order No. 8 (Amendment No. 3) creates a new total contract amount of \$2,296,795.00.”¹⁴

GWA submits that, “to date,” 60% of this total contract amount is funded by bond money; and that 40% is funded by U.S. E.P.A. grants.¹⁵ GWA further submits that “since the amount of the IDIQ contract funded by non-U.S. E.P.A. grant funds exceeds the PUC protocol limit of \$1,000,000”, GWA must obtain PUC approval of the contract.¹⁶ GWA notes that with respect to Amendment No. 3, this work will be paid by GWA bond funds applicable to the project and other funding sources.¹⁷

C. Board Resolution No. 22-FY2021

The instant request is supported by GWA Resolution No. 22-FY2021. In the Resolution, the CCU approved a third amendment to the subject contract, adding Task Order No. 8; and it approved an additional \$328,946.00 to the contract.¹⁸ The CCU also approved a 10% contingency of \$32,895.00.¹⁹ In the Resolution, the CCU also found that “Task Order 8 is required as part of GWA’s continuing commitment to improve GWA operations, effectively manage the CIP and improve customer service.”²⁰

¹³ Petition, p. 2.

¹⁴ Petition, p. 2.

¹⁵ Petition, p. 2.

¹⁶ Petition, p. 2.

¹⁷ Petition, p. 1.

¹⁸ Resolution, pp. 2-3.

¹⁹ Resolution, pp. 2-3.

²⁰ Resolution, p. 2.

D. Original Owner-Engineer Contract with Brown and Caldwell for Project Management and Construction Management Services

The subject contract involves general Engineering services, which is identified in the contract as follows:

To provide Indefinite Delivery/Indefinite Quantity (ID/IQ) professional project/construction management and utility consulting services for various types of water and wastewater utility projects and utility management activities as well as consulting engineering services in support of municipal planning, utility management analysis and regulatory compliance but not limited to the services indicated in the scope of work.²¹

The Task Orders to this contract have included, for instance, work on GWA's Consulting Engineer's Report; project management for GWA's Route 1 and Route 4 Sewer Rehabilitation; a Cost of Service study; and technical assistance with GWA's water meters.²² Subsequent Task Orders have further included extended work on the construction projects, such as the Route 1 and Route 4 Sewer Rehabilitation projects.²³

E. Task Order No. 8, Costs, and Funding

According to GWA, under Task Order No. 8, the Engineer will provide a general update to GWA's WRMP, issued back in August of 2018.²⁴ The update will include a summary of the financial planning work recently completed; including the 2020

²¹ Agreement Between Owner and Engineer for Professional Services, GWA Project No. M19-003-BND, p. 1 (June 17, 2019).

²² Amendment to Owner-Engineer Agreement No. 1, pp. 1-2 (Aug. 21, 2020).

²³ Amendment to Owner-Engineer Agreement No. 2, pp. 1-2 (Sept. 30, 2020).

²⁴ Petition, Exhibit 2 ("Task Order No. 8"), p. 1.

Consulting Engineer's Report, and the PUC Analytical Studies.²⁵ Also included in the scope of work is a comprehensive update of GWA's water system hydraulic model, which was last analyzed in 2016.²⁶

GWA further submits that the Consent Decree negotiations are in the works.²⁷ However, GWA has included an optional task as part of the new Task Order, incorporating the Engineer's review of the Consent Decree and comment on its impact on the Master Plan projects, schedules, and possible changes to the Master Plan CIP and CIP Schedules to meet the Consent Decree requirements.²⁸

According to GWA, the following services and costs comprise the total amount of \$328,946.00 for Task Order 8: \$26,190 for task management; and \$45,370 for updates to GWA's Capital Improvement Projects, asset management, and financial planning.

Task Order No. 8 also includes \$126,454 for a Water System Update, which involves: an update on an examination of GWA's water distribution, and supply, and storage systems; booster pump evaluations; water loss control; recommendations on fire hydrants; and updating GWA's project sheets. Task Order No. 8 further includes \$44,370 for a Wastewater System Update, gravity piping evaluations, wastewater treatment evaluations, solids management, and updating GWA's project sheets with new projects, to name a few. Moreover, this task order includes \$37,146 for Updating the Report; and \$21,304 to examine a Consent Decree's impact on the WRMP.

²⁵ Petition, Exhibit 2 ("Task Order No. 8"), p. 1.

²⁶ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

²⁷ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

²⁸ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

GWA submits that Task Order No. 8 will be paid for by GWA Bond funds, internal funding for Capital Improvement Projects, or other funding sources.²⁹

CONCLUSION

Since 2018, GWA reduced its use of a Program Management Office to oversee many of GWA's major construction projects. GWA previously indicated that even though Program Management Office was eliminated in 2019, it will still require assistance with engineering services, construction, and specialty consulting on complex projects.³⁰

As indicated in the CCU Resolution, "Task Order 8" is supposed to assist with "GWA's continuing commitment to improve GWA operations, effectively manage the CIP and improve customer service."³¹ The Administrative Law Judge assigned to this matter (the "ALJ") agrees. Indeed, GWA is in a critical juncture in its efforts to improve its quality of service and enhance its water and wastewater infrastructure, and GWA's engineering construction services contract plays a vital role in GWA's successful and timely completion of its construction projects. Further, the Engineer's role is especially crucial in instances where GWA lacks resources in planning, management analysis, and regulatory compliance.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth herein, the ALJ recommends that the PUC authorize the amount of \$328,946.00 for Amendment 3 to the June 17, 2019 Agreement Between Owner and

²⁹ Resolution, p. 2.

³⁰ See, e.g., GWA's PMO Transition Overview, GWA Docket 16-06, p. 9 (Dec. 29, 2016).

³¹ Resolution, p. 2.

Engineer for Professional Services. The ALJ does not recommend at this time any additional contingency amount since all PUC-approved GWA contracts are already subject to 20% contingency above an authorized amount. A proposed Order is submitted herewith for the Commissioners' consideration.

Dated this 25th day of October, 2021.



JOEPHET R. ALCANTARA
Administrative Law Judge

P213059.JRA

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

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**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of _____ ("Effective Date") between

Guam Waterworks Authority ("Owner") and

Brown and Caldwell ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:
Indefinite Delivery/Indefinite Quantity (ID/IQ) for Professional Project/Construction Management Services
GWA Project No. M19-003-BND

Other terms used in this Agreement are defined in Article 7.

Engineer's services under this Agreement are generally identified as follows:

To provide Indefinite Delivery/Indefinite Quantity (ID/IQ) professional project/construction management and utility consulting services for various types of water and wastewater utility projects and utility management activities as well as consulting engineering services in support of municipal planning, utility management analysis and regulatory compliance but not limited to the services indicated in the scope of work.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 Scope

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in Exhibit A.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 General

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.

- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
 - 1. any development that affects the scope or time of performance of Engineer's services;
 - 2. the presence at the Site of any Constituent of Concern; or
 - 3. any relevant, material defect or nonconformance in: (a) Engineer's services, (b) the Work, (c) the performance of any Constructor, or (d) Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 Time for Completion

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services, or specific dates by which services are to be completed, are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Project or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 Invoices

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 45 days of receipt.

4.02 Payments

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, then:
 - 1. amounts due Engineer will be increased at the maximum rate of interest permitted by law from said forty-fifth day; and
 - 2. Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices:* If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01. *After a disputed item has been settled, Engineer shall include the settled amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.*
- D. *Sales or Use Taxes:* If after the Effective Date any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under this Agreement, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C.

ARTICLE 5 – OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

~~5.02 Designing to Construction Cost Limit~~

- ~~A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F to this Agreement.~~

5.02 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care:* The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures:*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with any and all policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. This Agreement is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of Owner-provided written policies and procedures;

- c. changes after the Effective Date to Owner-provided written policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or elsewhere in this Agreement.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.
- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at the Site, Engineer, its Consultants, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design Without Construction Phase Services*

- A. Engineer shall be responsible only for those Construction Phase services expressly required of Engineer in Exhibit A, Paragraph A1.05. With the exception of such expressly required services, Engineer shall have no design, Shop Drawing review, or other obligations during construction, and Owner assumes all responsibility for the application and interpretation of the Construction Contract Documents, review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services. Owner waives all claims against the Engineer that may be connected in any way to Construction Phase administrative, engineering, or professional services except for those services that are expressly required of Engineer in Exhibit A.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under this Agreement, Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Project. Engineer grants Owner a limited license to use the Documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G. Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability policies carried by Owner, which are applicable to the Project.
- C. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor for the Project.
- D. Owner and Engineer shall each deliver to the other certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- E. All policies of property insurance relating to the Project, including but not limited to any builder's risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder's risk policy and any other property insurance relating to the Project. Owner and Engineer shall take appropriate measures in other Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.

- F. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled ~~or reduced in limits by endorsement~~, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.06 *Suspension and Termination*

A. *Suspension:*

- 1. *By Owner:* Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. *By Engineer:* Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.D.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. by either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. by Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.D.
 - 3) Engineer shall have no liability to Owner on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.06.B.1.a if the party receiving such notice begins, within seven days of

receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Engineer's receipt of notice from Owner.
- C. *Effective Date of Termination:* The terminating party under Paragraph 6.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. *Payments Upon Termination:*
 1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.D.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws and Regulations of the state in which the Project is located.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, *claims arising out of this Agreement* or money that is due or may become due) in this Agreement without the written consent of the other

party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.
2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in the Construction Contract Documents.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. Owner represents to Engineer that as of the Effective Date to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at or adjacent to the Site.
- B. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (1) Owner and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- C. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
- D. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until such portion of the Project is no longer affected.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on seven days notice.
- F. Owner acknowledges that Engineer is performing professional services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

6.11 Indemnification and Mutual Waiver

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees, from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to the Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), ~~including the loss of use resulting therefrom~~, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, "Limitations of Liability."
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorney's fees and expenses) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, and (2) nothing in this paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party

and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.

- F. *Mutual Waiver:* To the fullest extent permitted by Laws and Regulations, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under this Agreement. Upon Owner's request, Engineer shall provide a copy of any such item to Owner at cost.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement. *One or more waivers by either party of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach of the same by the other party.*
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

ARTICLE 7 – DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following definitions:
1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.
 2. *Additional Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 4. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
 5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 6. *Change Order*—A document which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
 7. *Change Proposal*—A written request by Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
 8. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5501 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, State, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or

standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

9. *Construction Contract*—The entire and integrated written contract between the Owner and Contractor concerning the Work.
10. *Construction Contract Documents*—Those items designated as “Contract Documents” in the Construction Contract, and which together comprise the Construction Contract.
11. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
12. *Construction Contract Times*—The number of days or the dates by which Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion; and (c) complete the Work.
13. *Construction Cost*—The cost to Owner of the construction of those portions of the entire Project designed or specified by or for Engineer under this Agreement, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to property; Owner’s costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
14. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Project, including but not limited to Contractors, Subcontractors, Suppliers, Owner’s work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
15. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer’s independent professional associates and consultants; subcontractors; or vendors.
16. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
17. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
18. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by Contractor.

19. *Effective Date*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
20. *Engineer*—The individual or entity named as such in this Agreement.
21. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
22. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
23. *Owner*—The individual or entity named as such in this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
24. *Project*—The total undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under this Agreement are a part.
25. *Record Drawings*—Drawings depicting the completed Project, or a specific portion of the completed Project, prepared by Engineer as an Additional Service and based on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
26. *Reimbursable Expenses*—The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic Services and Additional Services for the Project.
27. *Resident Project Representative*—The authorized representative of Engineer assigned to assist Engineer at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative. The duties and responsibilities of the Resident Project Representative, if any, are as set forth in Exhibit D.
28. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
29. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.

30. *Site*—Lands or areas to be indicated in the Construction Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for the use of Contractor.
31. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
32. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work.
33. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
34. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
35. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including Construction Cost and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.
36. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning, all as required by the Construction Contract Documents.
37. *Work Change Directive*—A written directive to Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.

B. *Day*:

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D, Incorporated Guam Procurement Law Clauses.
- E. Exhibit E, Notice of Acceptability of Work.
- F. Exhibit F, DELETED.
- G. Exhibit G, Insurance.
- H. Exhibit H, Dispute Resolution.
- I. Exhibit I, Limitations of Liability.
- J. Exhibit J, DELETED.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement*

- A. This Agreement, (together with the exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties. Amendments should be based whenever possible on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the selection process or in the Agreement execution;

2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Guam Waterworks Authority

By: [Signature]
Print name: MIGUEL C. BORDALLO, P.E.
Title: General Manager
Date Signed: 6-17-19

Engineer: Brown and Caldwell

By: [Signature]
Print name: RAYMOND MATASCI
Title: Senior Vice President, B&C Pacific Area Leader
Date Signed: JUNE 4, 2019

Engineer License or Firm's Certificate No. (if required):

COA No. 292

State of: Territory of Guam

Address for Owner's receipt of notices:
Gloria B. Nelson Public Service Building
688 Route 15, Mangilao, Guam 96913

Address for Engineer's receipt of notices:
414 West Soledad Avenue
Suite 602
Hagatna, Guam 96910

Certified Funds Available:

Approved as to Form:

By: [Signature]
GILDA M. MAFNAS
GWA Acting Chief Financial Officer

By: [Signature]
KELLY O. CLARK
GWA General Counsel

Date Signed: 6/14/19

Date Signed: 6/14/19

Contract Amount: \$750,000.00

Contingency: \$-0-

Amount Certified: \$250,000.00

Source of Funding: Internally Funded CIP

* All funds will be certified and allocated to appropriate CIP projects upon issuance of Task Order (contract Exhibit A)

This is **EXHIBIT K**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated June 27, 2019.

Amendment to Owner-Engineer Agreement No. 1

1. Background Data:

- a. Effective Date of Task Order: June 17, 2019
- b. Owner: Guam Waterworks Authority
- c. Engineer: Brown and Caldwell
- d. Specific Project: Indefinite Delivery/Indefinite Quantity (IDIQ) for Professional Project/Construction Management Services GWA Project No. M19-003-BND

2. Nature of Amendment

The original contract amount was \$750,000. During the contract, GWA identified needs for services under this contract that have totaled \$1,576,629 through six Task Orders (nos.1-6) and subsequent respective change orders. GWA has requested BC to prepare a scope of work and fee proposal for a future Task Order (#7) to address sewer system modeling and capacity evaluation in accordance with their Consent Decree. The scope of work is being prepared at this time and the fee is being formulated. Given the value of work requested by GWA, the contract must be amended by this Change Order to increase the maximum total amount of the IDIQ contract. By Resolution 28-FY2020 the CCU authorized increasing the Owner-Engineer Agreement to \$1,742,860 including an amount reserved for a Cost of Service Study in accordance with a PUC Stipulation. By Resolution 28-FY2020 the CCU authorized increasing the Owner-Engineer Agreement to \$1,742,860 to meet the needs identified in the Task Orders. The total contract amount is increased by \$992,860 to \$1,742,860 through this Change Order No.1 to the IDIQ.

This Amendment No.1 to the IDIQ Owner-Engineer Agreement contract will increase contract funding in the amount of \$992,860 to allow for Task Orders Nos.1 through 6 to be executed and completed as amended. The total contract amount is, therefore, \$1,742,860 through this Amendment No.1 to the IDIQ.

3. Task Order Summary (Reference only)

During the execution of this IDIQ contract, GWA issued the following Task Orders (and Change Orders to the Task Orders as noted) for the work described below.

- 1. Task Order No.1 – Consulting Engineer’s Report
 - a. Change Order No.1 – Clarification relative to the Municipal Advisor Disclosure
 - b. Change Order No.2 – Increase in scope for additional draft reports, updating financial projections, and evaluation of COVID-19 impacts on the financial projections.

- c. Change Order No.3 – Increase in scope to address continuing development of changes required to the financial plan to adequately address the COVID-19 impacts, additional financial analysis and report modifications.
 - d. Change Order No.4 – Increase in scope to add task for assistance with and attendance at the individual investor meetings.
2. Task Order No.2 – Project/Contract Management for Rt.4 Sewer Rehabilitation
 - a. Change Order No.1 – Extension of performance time and associated increase in total fee due to construction period extensions.
3. Task Order No.3 – Project/Contract Management for Rt.1 Sewer Rehabilitation
 - a. Change Order No.1 – Extension of performance time and associated increase in total fee due to construction period extensions; plus increasing the scope to provide PM/CM for construction of the Adelup to Hagatna section.
4. Task Order No.4 – Project/Construction Management for SSES phase 2 Hyundai Subdivision Lift Station
 - a. Change Order No.1 - Extension of performance time and associated increase in total fee due to construction delays; plus adding archaeological services to the scope of work.
5. Task Order No.5 - Cost of Service Study (PUC Stipulation)
6. Task Order No.6 – Water Meter Technical Assistance

Summary of Costs

Task Order No.1	\$188,490
Change Order No.1	\$0
Change Order No.2	\$86,065
Change Order No.3	\$13,084
Change Order No.4	\$3,836
Subtotal	\$291,475
Task Order No.2	\$148,348
Change Order No.1	\$48,959
Subtotal	\$197,307
Task Order No.3	\$209,780
Change Order No.1	\$266,270
Subtotal	\$476,050
Task Order No.4	\$181,924
Change Order No.1	\$87,304
Subtotal	\$269,228
Task Order No.5	\$318,343
Task Order No.6	<u>\$24,226</u>
Total	\$1,576,629

4. Agreement Summary

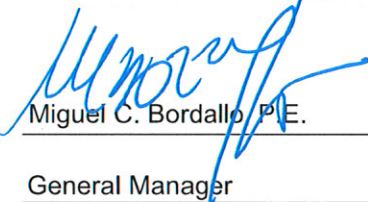
<u>IDIQ Contract Amount</u>	
a. Original Agreement amount:	\$ 750,000
b. Net change for TOs 1-6 and Change Orders:	<u>\$ 826,629</u>
c. Total for Change Orders #1-6:	\$1,576,629
d. Not to Exceed Amount [per CCU Resolution 28-FT2020 and this amendment]:	\$1,742,860
d. Available for Task Order #7 (Consent Decree):	\$ 166,231

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is August 21, 2020.

OWNER:

By:


Miguel C. Bordallo, P.E.

Title:

General Manager

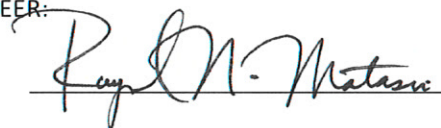
Date

Signed:

9.16.2020

ENGINEER:

By:


Ray M. Matasovic

Title:

Senior Vice President

Date

Signed:

August 31, 2020

Certified Funds:





Taling M. Taitano, CPA, CGFM, CGMA
Chief Financial Officer

This is **EXHIBIT K**, consisting of 3 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated June 27, 2019.

Amendment to Owner-Engineer Agreement No. 2

1. Background Data:

- a. Effective Date of Task Order: June 17, 2019
- b. Owner: Guam Waterworks Authority
- c. Engineer: Brown and Caldwell
- d. Specific Project: Indefinite Delivery/Indefinite Quantity (IDIQ) for Professional Project/Construction Management Services GWA Project No. M19-003-BND

2. Nature of Amendment

During the contract, GWA identified needs for services under this contract that have totaled \$1,576,629 through six Task Orders (nos.1-6) and subsequent respective change orders. By Resolution 28-FY2020 the CCU authorized increasing the Owner-Engineer Agreement to \$1,742,860. This amount included an amount up to \$166,231 for Task Order (No.7) to address sewer system modeling and capacity evaluation in accordance with their Consent Decree. Amendment No.1 to the Owner-Engineer Agreement increased the total contract amount to \$1,742,860 according to CCU Resolution 28-FY2020. GWA and BC have since defined the scope of work and fee for Task Order No.7 that exceeds the funds available in the contract for Task Order No.7 (\$166,231) as per Amendment No.1. The required amount for Task Order No.7 is \$325,750 and with a 10% contingency of \$32,575; the total amount is \$358,325. Therefore, by Resolution 36-FY2020, the CCU authorized increasing the Owner-Engineer Agreement by \$192,094 to \$1,934,954. Consistent with the CCU authorization, the contract must be amended by this Change Order to increase the maximum total amount of the IDIQ contract. The total contract amount is increased by \$192,094 from \$1,742,860 to \$1,934,954 through this Amendment No.2 to the IDIQ.

This Amendment No.2 to the IDIQ Owner-Engineer Agreement contract will increase contract funding in the amount of \$192,094 to allow for Task Order 7 to be executed and completed as amended. The total contract amount is, therefore, \$1,934,954 through this Amendment No.2 to the IDIQ.

3. Task Order Summary (Reference only)

During the execution of this IDIQ contract, GWA issued the following Task Orders (and Change Orders to the Task Orders as noted) for the work described below.

- 1. Task Order No.1 – Consulting Engineer’s Report
 - a. Change Order No.1 – Clarification relative to the Municipal Advisor Disclosure

- b. Change Order No.2 – Increase in scope for additional draft reports, updating financial projections, and evaluation of COVID-19 impacts on the financial projections.
 - c. Change Order No.3 – Increase in scope to address continuing development of changes required to the financial plan to adequately address the COVID-19 impacts, additional financial analysis and report modifications.
 - d. Change Order No.4 – Increase in scope to add task for assistance with and attendance at the individual investor meetings.
- 2. Task Order No.2 – Project/Contract Management for Rt.4 Sewer Rehabilitation
 - a. Change Order No.1 – Extension of performance time and associated increase in total fee due to construction period extensions.
- 3. Task Order No.3 – Project/Contract Management for Rt.1 Sewer Rehabilitation
 - a. Change Order No.1 – Extension of performance time and associated increase in total fee due to construction period extensions; plus increasing the scope to provide PM/CM for construction of the Adelup to Hagatna section.
- 4. Task Order No.4 – Project/Construction Management for SSES phase 2 Hyundai Subdivision Lift Station
 - a. Change Order No.1 - Extension of performance time and associated increase in total fee due to construction delays; plus adding archaeological services to the scope of work.
- 5. Task Order No.5 - Cost of Service Study (PUC Stipulation)
- 6. Task Order No.6 – Water Meter Technical Assistance
- 7. Task Order No.7 – Consent Decree and Hydraulic Modeling Assistance

Summary of Costs

Task Order No.1	\$188,490
Change Order No.1	\$0
Change Order No.2	\$86,065
Change Order No.3	\$13,084
Change Order No.4	\$3,836
Subtotal	\$291,475
Task Order No.2	\$148,348
Change Order No.1	\$48,959
Subtotal	\$197,307
Task Order No.3	\$209,780
Change Order No.1	\$266,270
Subtotal	\$476,050
Task Order No.4	\$181,924
Change Order No.1	\$87,304
Subtotal	\$269,228
Task Order No.5	\$318,343
Task Order No.6	\$24,226

Exhibit K – Amendment to Task Order

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Task Order No.7	<u>\$358,325</u>
Total	\$1,934,954

4. Agreement Summary

	<u>IDIQ Contract Amount</u>	
a.	Original Agreement amount:	\$ 750,000
b.	Net change for Amendment No.1:	<u>\$ 992,860</u>
c.	Amended Total Amount:	\$1,742,860
d.	Total Amount for Task Orders No.1-7:	\$1,934,954
d.	Net change for Amendment No.2:	\$ 192,094

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is September 30, 2020.

OWNER:

By:

Miguel C. Bordallo, P.E.

Title:

General Manager

Date

Signed:

10.16.2020

ENGINEER:

By:

Raymond M. Mataro

Title:

Senior Vice President

Date

September 28, 2020

Signed:

Certified Funds:

Taling M. Taitano 10/14/2020
Taling M. Taitano, CPA, CGFM, CGMA
Chief Financial Officer

IN RE: PETITION TO APPROVE)	GWA DOCKET 22-01
CONTRACT AMENDMENT)	
AMENDMENT NO. 3)	
WITH BROWN AND CALDWELL))	ORDER
TO COMPLETE THE INTERIM))	
WATER RESOURCE MASTER)	
PLAN UPDATE)	
)	

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the Petition to Approve the Indefinite Delivery Indefinite Quantity (“IDIQ”) Contract Amendment No. 3, to Execute Task Order No. 8, with Brown and Caldwell to Complete the Interim Water Resource Master Plan Update (“WRMP”) (the “Petition”), filed by the Guam Waterworks Authority (“GWA”) on October 18, 2021.

DETERMINATIONS

¹ Petition to Approve the IDIQ Contract Amendment No. 3, to Execute Task Order No. 8, with Brown and Caldwell to Complete the Interim Water Resource Master Plan Update, p. 1 (Oct. 18, 2021).

amended to include additional task orders, which involved, for instance: additional work in GWA's Consulting Engineer's Report; project management for GWA's Route 1 and Route 4 Sewer Rehabilitation; a Cost of Service study; and technical assistance with GWA's water meters.² This amendment increased the total amount of the contract to around \$1.7 million.³

In September 30, 2020, this contract was amended again to include additional work on the Consulting Engineer's Report and extended work on the construction projects, such as the Route 1 and Route 4 Sewer Rehabilitation projects.⁴ This amendment added \$192,094 to the contract, resulting in a cost of over \$1.9 million for the entire contract.⁵

On May 25, 2021, the Consolidated Commission on Utilities (the "CCU") issued GWA Resolution No. 22-FY2021, which essentially approved a third amendment to the subject contract, adding Task Order No. 8; and further approved an additional \$328,946.00 to the contract.⁶

A. Review of GWA's ID/IQ Contract with Brown and Caldwell for Project Management and Construction Management Services

Pursuant to 12 G.C.A. §12105,⁷ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's

² Amendment to Owner-Engineer Agreement No. 1, pp. 1-2 (Aug. 21, 2020).

³ Amendment to Owner-Engineer Agreement No. 1, p. 1 (Aug. 21, 2020).

⁴ Amendment to Owner-Engineer Agreement No. 2, pp. 1-2 (Sept. 30, 2020).

⁵ Amendment to Owner-Engineer Agreement No. 2, p. 1 (Sept. 30, 2020).

⁶ GWA Resolution No. 22-FY2021, issued by the Consolidated Commission on Utilities, pp. 2-3 (May 25, 2021) (hereinafter referred to as the "Resolution").

⁷ Formerly 12 G.C.A. §121004.

express approval. Additionally, pursuant to GWA's Contract Review Protocol issued in Administrative Docket 00-04, "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun"⁸ GWA must also seek PUC's approval for any uses of bond funds.⁹

B. GWA's Request for Approval of Amendment No. 3, Task Order No. 8, Owner-Engineer Contract with Brown and Caldwell

In its Petition, GWA requested that the PUC authorize Amendment No. 3, to the June 17, 2019 Owner-Engineer contract with Brown and Caldwell for Project Management and Construction Management services. Amendment No. 3 would add Task Order No. 8, to the Engineer's Scope of Work, which specifically tasks the Engineer with completing an update to GWA's 2018 WRMP.¹⁰ GWA intends on completing this WRMP update, which will review GWA's progress on system recommendations and capital improvement projects.¹¹ GWA also anticipates that certain work will be required in order to complete this WRMP update, particularly tasks required by a U.S. Environmental Protection Agency ("U.S. E.P.A.") Consent Decree.¹²

GWA maintained that the cost for Task Order No. 8 (Amendment No. 3) is "\$328,946.00 with a ten (10%) contingency of \$32,895.000 increasing the Brown and

⁸ GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

⁹ *Id.*

¹⁰ Petition, p. 2.

¹¹ Resolution, p. 1.

¹² Resolution, p. 1.

Caldwell PM/CM IDIQ contract by \$361,841.00.”¹³ GWA further maintained that “Task Order No. 8 (Amendment No. 3) creates a new total contract amount of \$2,296,795.00.”¹⁴

GWA submits that, “to date,” 60% of this total contract amount is funded by bond money; and that 40% is funded by U.S. E.P.A. grants.¹⁵ GWA further submitted that “since the amount of the IDIQ contract funded by non-U.S. E.P.A. grant funds exceeds the PUC protocol limit of \$1,000,000”, GWA must obtain PUC approval of the contract.¹⁶ GWA notes that with respect to Amendment No. 3, this work will be paid by GWA bond funds applicable to the project and other funding sources.¹⁷

C. Board Resolution No. 22-FY2021

The instant request is supported by GWA Resolution No. 22-FY2021. In the Resolution, the CCU approved a third amendment to the subject contract, adding Task Order No. 8; and it approved an additional \$328,946.00 to the contract.¹⁸ The CCU also approved a 10% contingency of \$32,895.00.¹⁹ In the Resolution, the CCU also found that “Task Order 8 is required as part of GWA’s continuing commitment to improve GWA operations, effectively manage the CIP and improve customer service.”²⁰

¹³ Petition, p. 2.

¹⁴ Petition, p. 2.

¹⁵ Petition, p. 2.

¹⁶ Petition, p. 2.

¹⁷ Petition, p. 1.

¹⁸ Resolution, pp. 2-3.

¹⁹ Resolution, pp. 2-3.

²⁰ Resolution, p. 2.

D. Original Owner-Engineer Contract with Brown and Caldwell for Project Management and Construction Management Services

The subject contract involves general Engineering services, which is identified in the contract as follows:

To provide Indefinite Delivery/Indefinite Quantity (ID/IQ) professional project/construction management and utility consulting services for various types of water and wastewater utility projects and utility management activities as well as consulting engineering services in support of municipal planning, utility management analysis and regulatory compliance but not limited to the services indicated in the scope of work.²¹

The Task Orders to this contract have included, for instance, work on GWA's Consulting Engineer's Report; project management for GWA's Route 1 and Route 4 Sewer Rehabilitation; a Cost of Service study; and technical assistance with GWA's water meters.²² Subsequent Task Orders have further included extended work on the construction projects, such as the Route 1 and Route 4 Sewer Rehabilitation projects.²³

E. Task Order No. 8, Costs, and Funding

According to GWA, under Task Order No. 8, the Engineer will provide a general update to GWA's WRMP, issued back in August of 2018.²⁴ The update will include a summary of the financial planning work recently completed; including the 2020

²¹ Agreement Between Owner and Engineer for Professional Services, GWA Project No. M19-003-BND, p. 1 (June 17, 2019).

²² Amendment to Owner-Engineer Agreement No. 1, pp. 1-2 (Aug. 21, 2020).

²³ Amendment to Owner-Engineer Agreement No. 2, pp. 1-2 (Sept. 30, 2020).

²⁴ Petition, Exhibit 2 ("Task Order No. 8"), p. 1.

Consulting Engineer's Report, and the PUC Analytical Studies.²⁵ Also included in the scope of work is a comprehensive update of GWA's water system hydraulic model, which was last analyzed in 2016.²⁶

GWA further submitted that the Consent Decree negotiations are in the works.²⁷ However, GWA has included an optional task as part of the new Task Order, incorporating the Engineer's review of the Consent Decree and comment on its impact on the Master Plan projects, schedules, and possible changes to the Master Plan CIP and CIP Schedules to meet the Consent Decree requirements.²⁸

According to GWA, the following services and costs comprise the total amount of \$328,946.00 for Task Order 8: \$26,190 for task management; and \$45,370 for updates to GWA's Capital Improvement Projects, asset management, and financial planning.

Task Order No. 8 also includes \$126,454 for a Water System Update, which involves: an update on an examination of GWA's water distribution, and supply, and storage systems; booster pump evaluations; water loss control; recommendations on fire hydrants; and updating GWA's project sheets. Task Order No. 8 further includes \$44,370 for a Wastewater System Update, gravity piping evaluations, wastewater treatment evaluations, solids management, and updating GWA's project sheets with new projects, to name a few. Moreover, this task order includes \$37,146 for Updating the Report; and \$21,304 to examine a Consent Decree's impact on the WRMP.

²⁵ Petition, Exhibit 2 ("Task Order No. 8"), p. 1.

²⁶ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

²⁷ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

²⁸ Petition, Exhibit 2 ("Task Order No. 8"), p. 2.

GWA submitted that Task Order No. 8 will be paid for by GWA Bond funds, internal funding for Capital Improvement Projects, or other funding sources.²⁹

Since 2018, GWA reduced its use of a Program Management Office to oversee many of GWA's major construction projects. GWA previously indicated that even though Program Management Office was eliminated in 2019, it will still require assistance with engineering services, construction, and specialty consulting on complex projects.³⁰

The ALJ found that, as indicated in the CCU Resolution, "Task Order 8" is supposed to assist with "GWA's continuing commitment to improve GWA operations, effectively manage the CIP and improve customer service."³¹ The ALJ agreed. Indeed, the ALJ further found that GWA is in a critical juncture in its efforts to improve its quality of service and enhance its water and wastewater infrastructure, and GWA's engineering construction services contract plays a vital role in GWA's successful and timely completion of its construction projects. Additionally, the ALJ found the Engineer's role is especially crucial in instances where GWA lacks resources in planning, management analysis, and regulatory compliance.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth herein, the ALJ recommended that the PUC authorize the amount of \$328,946.00 for Amendment 3 to the June 17, 2019 Agreement Between Owner and Engineer for Professional Services. The ALJ did not recommend any additional

²⁹ Resolution, p. 2.

³⁰ See, e.g., GWA's PMO Transition Overview, GWA Docket 16-06, p. 9 (Dec. 29, 2016).

³¹ Resolution, p. 2.

contingency amount since all PUC-approved GWA contracts are already subject to 10% contingency above an authorized amount.

The Commission hereby adopts the findings in the October 25, 2021 ALJ Report and therefore issued the following.

ORDERING PROVISIONS

Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED.
2. That GWA is authorized to enter into Amendment 3 to the June 17, 2019 Agreement Between Owner and Engineer for Professional Services with Brown and Caldwell in the amount of \$328,946.00.
3. GWA is ordered to pay the PUC's regulatory fees and expenses, including and without limitation, consulting and counsel fees, and the fees and expenses associated with this matter. Assessment of the PUC's regulatory fees and expenses is authorized pursuant to 12 G.C.A. §§ 12103(b) and 12125(b), and Rule 40 of the Rules of Practice and Procedure before the PUC.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

SO ORDERED this 28th day of October, 2021.

JEFFREY C. JOHNSON
Chairman

ROWENA E. PEREZ-CAMACHO
Commissioner

JOSEPH M. MCDONALD
Commissioner

PEDRO GUERRERO
Commissioner

MICHAEL A. PANGELINAN
Commissioner

PETER MONTINOLA
Commissioner

DORIS FLORES BROOKS
Commissioner