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7 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9) GWA DOCKET NO. 23-02
10)
11) **PETITION FOR APPROVAL OF**
12) **CONTRACT EXTENSION FOR**
13) **WASTEWATER CHEMICALS FOR GWA**
14) **WATER TREATMENT PLANTS**
15)
16)

10 IN THE MATTER OF:

11 **PETITION FOR APPROVAL OF**
12 **CONTRACT EXTENSION FOR**
13 **WASTEWATER CHEMICALS FOR GWA**
14 **WATER TREATMENT PLANTS**

15
16 **COMES NOW**, the GUAM WATERWORKS AUTHORITY (“GWA”), by and through
17 its counsel of record, THERESA G. ROJAS, ESQ., and hereby files its Petition for Approval
18 of GWA’s first one-year contract extension with JMI-Edison (“JMI”) and Total Chemical
19 Resources, Inc. (“Total Chemical”) for the purchase of wastewater chemicals for the
20 Northern District, Hagatna and Agat Santa Rita Wastewater Treatment Plants.

21
22 **I. BACKGROUND**

23 GWA is required to use Chemically Enhanced Primary Treatment at its
24 Wastewater Treatment Plants (“WWTP”) and must purchase the chemicals for the application
25 of the treatment process in order to remain in compliance with its November 11, 2011, federal
26 Court Order. On August 29, 2019, the PUC issued an Order under PUC GWA Docket 19-11
27 authorizing GWA to enter proposed contracts with two offerors, JMI-Edison and Total
28 Chemicals. See attached Exhibit A. The PUC approved a three-year term contract with JMI

1 Edison for a total cost not to exceed \$1,064,053.53 and approved a three-year term contract
2 with Total Chemicals for a total cost not to exceed \$2,627,536.56. See attached Exhibit A. These
3 contracts were permitted an additional contingency of 20% per contract pursuant to GWA's
4 Contract Review Protocol. The respective contracts with both JMI Edison and Total Chemicals
5 were entered on December 11, 2019, and will expire on December 11, 2022, unless renewed.
6 (See Exhibits C and D).
7

8 Under Section 1 (c), within the respective contract(s) it was made clear that GWA solely
9 secured approval for the initial three-year contract terms and is required to seek PUC approval
10 prior to entering into additional one-year term extensions. (See Exhibits C and D).
11

12 **II. REQUEST FOR APPROVAL**

13 GWA now desires the authority to renew the existing contracts with JMI Edison and
14 Total Chemicals, entered on December 11, 2019 pursuant to GWA IFB BID No. 2019-17, for
15 wastewater treatment chemicals. At present, GWA has not exceeded the total contract amounts
16 under the initial three-year term of \$1,064,053.53 and \$2,627,536.56 and therefore requests to
17 exercise its option to renew the contracts for additional one-year terms, under the same terms
18 and amounts previously approved under PUC Docket 19-11.
19

20 In support of this Petition, the CCU adopted and approved GWA Resolution 39-
21 FY2019 and permitted GWA to enter into the first three-year term and additionally the
22 authority to enter into subsequent contract extensions, limited to two one-years terms, as
23 needed. (See attached Exhibit B).
24

25 **CONCLUSION**

26 Based on the foregoing, GWA requests the PUC allow GWA to exercise its first option
27 to renew and extend the existing December 11, 2019, contract for wastewater treatment
28

1 chemicals for both JMI-Edison (“JMI”) and Total Chemical Resources, Inc. as it is
2 reasonable, prudent, and necessary.
3

4 **RESPECTFULLY SUBMITTED** this 17th day of November, 2022.
5

6 By:



7 **THERES G. ROJAS**
8 GWA Legal Counsel
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BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

IN RE: PETITION FOR APPROVAL)
OF CONTRACTS WITH) GWA DOCKET 19-11
TOTAL CHEMICAL)
RESOURCES, INC. AND JMI-)
EDISON FOR THE PURCHASE) ORDER
OF WASTEWATER CHEMICALS)
FOR WASTEWATER)
TREATMENT PLANTS)



INTRODUCTION

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the July 29, 2019 Petition for Approval of the Contracts with JMI-Edison and Total Chemical for the Purchase of Wastewater Chemicals for the Northern, Hagåtña and Agat Santa Rita Wastewater Treatment Plants (the “Petition”), filed by the Guam Waterworks Authority (“GWA”).

On August 27, 2019, the Administrative Law Judge of the PUC (the “ALJ”) assigned to this matter filed an ALJ Report that included his findings and recommendations based on the administrative record before the PUC. The ALJ found the following.

DETERMINATIONS

On April 17, 2019, GWA issued Invitation for Bid (“IFB”) 2019-17 soliciting bids for the necessary chemicals to operate the wastewater treatment plants (“WWTPs”).¹ According to GWA, out of nineteen (19) prospective bidders, two (2) bidders responded.² Thereafter, GWA’s review committee determined that the lowest

¹ Petition, pp. 1-2.

² Petition, p. 2.

responsive and responsible bidder for anionic polymer and cationic polymer was JMI-Edison; and that the best offer for inorganic coagulant aluminum chlorohydrate (“ACH”) was Total Chemical Resources, Inc. (“Total Chemical”).³

On July 23, 2019, the Guam Consolidated Commission on Utilities (the “CCU”) authorized GWA to enter into contracts with JMI-Edison and Total Chemical, for an amount not to exceed \$4,060,750.00 for both contracts over a three-year term.⁴

A. GWA’s Petition

In its Petition, GWA maintains that it “is required to provide wastewater treatment chemicals to the Northern District and Hagåtña WWTPs for chemically enhanced primary treatment as required by U.S. E.P.A. and specified in § II A Paragraphs 2 and 5 of the 2011 Court Order, and to the Agat-Santa Rita Wastewater Treatment Plant for secondary treatment to ensure the reduction of solids and the discharge of effluent complying with permits for those facilities.”⁵ And from its most recent procurement of its required wastewater chemicals, GWA determined that the lowest responsive and responsible bidder for anionic polymer and cationic polymer was JMI-Edison; and that the best offer for ACH was Total Chemical.⁶ Specifically, JMI-Edison offered \$1.63 per pound for Cationic Polymer and \$1.16 per pound for Anionic Polymer.⁷ Total Chemical offered \$1.09 per pound for ACH.⁸

³ Petition, p. 2.

⁴ Petition, p. 2 and Exhibit A.

⁵ Petition, pp. 1 and 3.

⁶ Petition, p. 2.

⁷ Petition, p. 2.

⁸ Petition, p. 2.

B. Contract Review Protocol

Pursuant to 12 G.C.A. §12105,⁹ GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. In addition, GWA's Contract Review Protocol requires that "[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"¹⁰

With respect to multi-year contracts, "[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal"; and that the "test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options."¹¹

C. Costs

GWA submitted that the total cost of the two contracts for the chemicals is \$4,060,750.00.¹² Specifically, the cost of the three-year contract with JMI-Edison for the supply of Cationic Polymer¹³ and Anionic Polymer¹⁴ is \$1,170,458.88, which includes a ten percent (10%) contingency; and the cost of the three-year contract with Total Chemical

⁹ Formerly 12 G.C.A. §12004.

¹⁰ GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

¹¹ Id., p. 2.

¹² Petition, p. 3.

¹³ Based on JMI-Edison's bid of \$1.63 per pound, at an estimated use of 138,061 pounds per year.

¹⁴ Based on JMI-Edison's bid of \$1.16 per pound, at an estimated use of 125,789 pounds per year.

for the purchase of ACH¹⁵ is \$2,890,290.22, which also includes a ten percent (10%) contingency.¹⁶ Funding for purchase of the chemicals will be from GWA's operating revenue.¹⁷

D. CCU Resolution No. 39-FY2019

The instant petition is supported by Resolution No. 39-FY2019 issued by the "CCU" at its July 23, 2019 meeting. In the Resolution, the CCU found that pursuant to federal court order, GWA is required to operate the Northern District and Hagåtña WWTPs with "Chemically Enhanced Primary Treatment" and that such treatment requires the purchase of these chemicals as part of its treatment process.¹⁸ The CCU added that GWA's "newest treatment plant" at Agat-Santa Rita "will also require the use of these chemicals."¹⁹ The CCU further found that the terms of the bid proposals submitted by JMI-Edison and Total Chemical were fair and reasonable; and authorized GWA to enter into contracts with JMI-Edison, at a cost of \$1,170,458.88 for three years, and Total Chemical, at a cost of \$2,890,290.22 for three years.²⁰

CONCLUSION

These chemicals are indispensable and required for GWA's daily wastewater operations, specifically to operate its Northern District and the Hagåtña WWTPs, along with the new Agat-Santa Rita WWTP, and to keep GWA in compliance with federal laws, permits and federal guidelines.

¹⁵ Based on Total Chemical's bid of \$1.09 per pound, at an estimated use of 803,528 pounds per year.

¹⁶ Petition, p. 2.

¹⁷ CCU Resolution No. 39-FY2019, p. 3 (July 23, 2019).

¹⁸ CCU Resolution No. 39-FY2019, p. 1.

¹⁹ CCU Resolution No. 39-FY2019, p. 1.

²⁰ CCU Resolution No. 39-FY2019, pp. 3-4.

Further, the PUC regularly reviews GWA's purchase of these wastewater chemicals. The three chemicals that are the subject of the instant petition are generally used for wastewater treatment. For instance, anionic polymers aid in filtering wastewater and for dewatering sludge; cationic polymers also aid in the clarification of water. An inorganic coagulant, like ACH, absorbs impurities, also serving to clean the water.

Based on the bids, the prices for Anionic Polymer and ACH also appear to be less per pound when compared to GWA's prior purchase of such chemicals. For instance, the price of ACH went from \$1.25 per pound to \$1.09 per pound; and the price of Anionic Polymer went from \$1.98 per pound to \$1.16 per pound.

In addition, the ALJ found that GWA has provided adequate documentation to support the approval of the subject contracts for the purchase of these chemicals. Therefore, the ALJ recommended that the PUC authorize GWA to enter into contracts with JMI-Edison and Total Chemical.

Based on the documentation provided by GWA in this docket, and for the other reasons set forth above, the ALJ recommended that the PUC authorize the contracts between GWA and JMI-Edison, for a total cost not to exceed \$1,170,458.88 for three years; and between GWA and Total Chemical, for a total cost not to exceed \$2,890,290.22 for three years. These contracts should be subject to the usual cost contingencies provided under the Contract Review Protocol.²¹

The Commission hereby adopts the findings made in the August 27, 2019 ALJ Report, and therefore, issues the following:

²¹ See Section 9, GWA's Contract Review Protocol, Administrative Docket 00-004, p. 1 (Oct. 27, 2005).

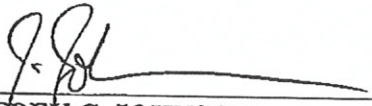
ORDERING PROVISIONS

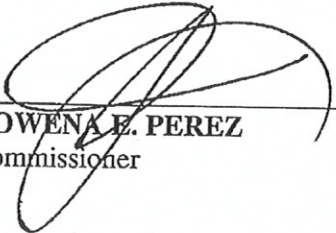
Upon careful consideration of the record herein, and for good cause shown, on motion duly made, seconded and carried by the affirmative vote of the undersigned Commissioners, the Commission hereby ORDERS the following:

1. That the instant Petition is hereby APPROVED.
2. GWA is authorized to enter into the proposed contracts with JMI-Edison, for a total cost not to exceed \$1,064,053.53 for three years; and with Total Chemical, for a total cost not to exceed \$2,627,536.56 for three years. These contracts shall be subject to the cost contingencies provided under the Contract Review Protocol.
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.

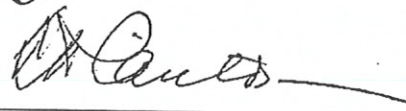
[SIGNATURES TO FOLLOW ON NEXT PAGE]

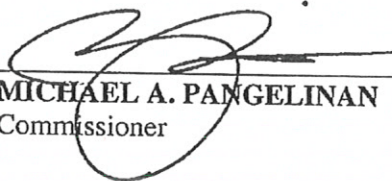
SO ORDERED this 29th day of August, 2019.


JEFFREY C. JOHNSON
Chairman



ROWENA E. PEREZ
Commissioner


JOSEPH M. MCDONALD
Commissioner


FILOMENA M. CANTORIA
Commissioner


MICHAEL A. PANGELINAN
Commissioner


PETER MONTINOLA
Commissioner


MARK MILLER
Commissioner

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CONSOLIDATED COMMISSION ON UTILITIES
Guam Power Authority | Guam Waterworks Authority
P.O. Box 2977 Hagåtña, Guam 96932 | (671)649-3002 | guamccu.org

RESOLUTION NO. 39-FY2019

**RELATIVE TO APPROVAL OF THE CONTRACT WITH TOTAL CHEMICAL
RESOURCES, INC. AND JMI-EDISON FOR THE PURCHASE OF WASTEWATER
CHEMICALS FOR WASTEWATER TREATMENT PLANTS**

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities (“CCU”) has plenary authority over financial, contractual, and policy matters relative to the Guam Waterworks Authority (“GWA”); and

WHEREAS, the Guam Waterworks Authority (“GWA”) is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, GWA currently has a number of critical 2011 Court Order (“CO”) Projects, including system upgrades at the Northern District Wastewater Treatment Plant (NDWWTP) and the Hagåtña Wastewater Treatment Plant (HWWTP) to use Chemically Enhanced Primary Treatment as specified in § II A Paragraphs 2 and 5 of the CO; and

WHEREAS, GWA has completed the system upgrades of both WWTPs to use Chemical Enhanced Primary Treatment and is now operating the plants as specified in the CO; and

WHEREAS, the Chemically Enhanced Primary Treatment requires the purchase of chemicals for the application of the treatment process at the NDWWTP, and the HWWTP; and

WHEREAS, the secondary treatment process employed at GWA’s newest treatment plant, the Agat-Santa Rita Wastewater Treatment Plant (ASRWWTP), will also require the use of these chemicals; and

1 **WHEREAS**, GWA issued Bid Number 2019-17 to solicit bid proposals from
2 experienced and responsive bidders to provide chemicals necessary to continue to operate the
3 Northern District WWTP, the Hagåtña WWTP and the Agat-Santa Rita WWTP in compliance
4 with the Court Order; and

5
6 **WHEREAS**, there were two responsive and responsible bidders who offered chemicals
7 meeting the requirements in IFB 2019-17 (see Exhibit A); and

8
9 **WHEREAS**, the IFB 2019-17 offers were evaluated by GWA's review committee who
10 determined that the best offer for Inorganic Coagulant ("ACH") (for sludge dewatering) was
11 made by Total Chemical Resources, Inc. ("Total Chemicals"); and

12
13 **WHEREAS**, the committee also determined that the best offer for Anionic and Cationic
14 Polymer was made by JMI-Edison ("JMI"); and

15
16 **WHEREAS**, GWA accepted Total Chemical's bid proposal (see Exhibit B) of \$1.09/lb.
17 to supply Inorganic Coagulant for an estimated annual cost of Eight Hundred Seventy-Five
18 Thousand Eight Hundred Forty-Five Dollars and Fifty-Two Cents (\$875,845.52), and for a
19 three (3) year contract totaling Two Million Six Hundred Twenty-Seven Thousand Five
20 Hundred Thirty-Six Dollars and Fifty-Six Cents (\$2,627,536.56);

21 **WHEREAS**, GWA also accepted JMI Edison's bid proposal (see Exhibit C) of
22 \$1.16/lb. for Anionic Polymer at an estimated annual cost of One Hundred Twenty-Nine
23 Thousand Six Hundred Forty-Five Dollars and Eight Cents (\$129,645.08), and for a three (3)
24 year contract in the amount of Three Hundred Eighty-Eight Thousand Nine Hundred Thirty-
25 Five Dollars and Twenty-Four Cents (\$388,935.24), and Cationic Polymer at 1.63/lb. for an
26 estimated annual cost of Two Hundred Twenty-Five Thousand Thirty-Nine Dollars and Forty-
27 Three Cents (\$225,039.43), for a three (3) year contract in the amount of Six Hundred Seventy-
28 Five Thousand One Hundred Eighteen Dollars and Twenty-Nine Cents (\$675,118.29), which
29 brings the grand total to One Million Sixty-Four Thousand Fifty-Three Dollars and Fifty-Three
30 Cents (\$1,064,053.53); and
31
32

1 **WHEREAS**, GWA Management seeks CCU approval of Total Chemical's Contract in
2 the amount of Two Million Six Hundred Twenty-Seven Thousand Five Hundred Thirty-Six
3 Dollars and Fifty-Six Cents (\$2,627,536.56) for the purchase of Inorganic Coagulant ("ACH"),
4 plus a ten percent (10%) contingency totaling Two Million Eight Hundred Ninety Thousand
5 Two Hundred Ninety Dollars and Twenty-Two Cents (\$2,890,290.22) for three (3) years, with
6 the option to renew an additional two (2) one (1) year term; and

7
8 **WHEREAS**, GWA Management further seeks CCU approval of JMI Edison's Contract
9 in the amount of One Million Sixty-Four Thousand Fifty-Three Dollars and Fifty-Three Cents
10 (\$1,064,053.53) for the purchase of Anionic Polymer and Cationic Polymer, plus a ten percent
11 (10%) contingency with a total cost of One Million One Hundred Seventy Thousand Four
12 Hundred Fifty-Eight Dollars and Eighty-Eight Cents (\$1,170,458.88) for a three (3) year
13 contract, with the option to renew for an additional two (2) one (1) year term; and

14
15 **WHEREAS**, the source of funding for the purchase of wastewater chemicals will be
16 from the GWA Operations and Maintenance Budget (revenue funds).

17
18 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
19 does hereby approve the following:

- 20 1. The recitals set forth above hereby constitute the findings of the CCU.
- 21 2. The CCU hereby finds that the terms of the bid proposals submitted by Total
22 Chemical Resources, Inc and JMI Edison are fair and reasonable.
- 23 3. The CCU hereby authorizes the management of GWA to proceed based on
24 the notice of award to Total Chemical Resources, Inc. attached hereto as
25 Exhibit D, and the notice of award to JMI Edison attached hereto as Exhibit
26 E both of which are incorporated into this Resolution in its entirety.
- 27 4. The CCU hereby further authorizes the management of GWA to enter into a
28 contract with Total Chemical Resources, Inc. to purchase chemicals in the
29 amount of Two Million Eight Hundred Ninety Thousand Two Hundred
30 Ninety Dollars and Twenty-Two Cents (\$2,890,290.22) for three (3) years,
31 with the option to renew an additional two (2) one (1) year terms.

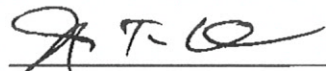
- 1 5. The CCU hereby further authorizes the management of GWA to enter into a
2 Contract with JMI Edison to purchase chemicals in the amount of One
3 Million One Hundred Seventy Thousand Four Hundred Fifty-Eight Dollars
4 and Eighty-Eight Cents (\$1,170,458.88) for three (3) years, with the option to
5 renew an additional two (2) one (1) year terms.
6 6. GWA Management is hereby authorized to seek PUC approval as required
7 by Docket No. 00-04.

8
9 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the
10 adoption of this Resolution.

11
12 **DULY AND REGULARLY ADOPTED**, this 23rd day of July, 2019.

13
14 Certified by:

Attested by:

15 

16 **JOSEPH T. DUENAS**
17 Chairperson

18 

19 **MICHAEL T. LIMTIACO**
20 Secretary

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2
3 **SECRETARY'S CERTIFICATE**
4

5 I, Michael T. Limtiaco, Board Secretary of the Consolidated Commission on Utilities as
6 evidenced by my signature above do hereby certify as follows:
7

8 The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular
9 meeting by the members of the Guam Consolidated Commission on Utilities, duly and
10 legally held at a place properly noticed and advertised at which meeting a quorum was
11 present and the members who were present voted as follows:
12

13 AYES: 5

14 NAYS: 0

15 ABSTENTIONS: 0

16 ABSENT: 0

17 ///

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23 ///



EXHIBIT B-6

N 2 L
12/18/19

FORMAL CONTRACT

COPY

THIS AGREEMENT AND FORMAL CONTRACT is made and entered into this 11 day of December, 2019 by and between the **GUAM WATERWORKS AUTHORITY** ("GWA"), whose business address is Gloria B. Nelson Public Services Building, 688 Route 15 Mangilao, Guam 96913 and **Johndel International Inc., DBA JMI-EDISON** ("Contractor"), whose mailing address is 130 Siket St. Harmon Industrial Park, Tamuning Gu 96913 licensed to conduct business on Guam and having Guam business license Number 1603921.

WITNESSETH, that whereas, GWA intends to purchase Cationic Polymer and Anionic Polymer from JMI-Edison for the purpose of its use at GWA's Northern District, Hågatña and Agat Santa-Rita Wastewater Treatment Plants to ensure regulatory compliance as identified in GWA Bid No. 2019-17.

NOW THEREFORE, GWA and the Contractor for the considerations hereinafter set forth herein and in other documents associated with the performance hereunder, agree as follows:

SECTION 1. THE CONTRACTOR AGREES:

To provide Cationic Polymer manufactured by Veolia Water Solutions & Technologies at a cost to GWA of \$1.63 per pound and Anionic Polymer manufactured by Veolia Water Solutions & Technologies at a cost to GWA of \$1.16 per pound as specified in GWA IFB No. 2019-17 CIF delivered pursuant to the bid on an "as-needed basis." Contractor agrees to maintain all time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Contractor also understands that it is responsible for all taxes and fees which may be due relative to payment or performance hereunder (including but not limited to, all employee, corporate and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing signed by both parties.

- (a) **CONTRACT TIME:** The Contractor agrees to commence work under this contract upon written notice to proceed and to provide the goods and services at the price specified above for a period of three (3) years from the date of the Notice to Proceed and as specified in the Bid Documents relative to the time, place and manner provided in the Bid Documents (as amended). Contractor agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health and that time is always of the essence.
- (b) The Contractor understands that this procurement was not an "all or nothing bid" and that GWA could award a portion of the work called for under the bid to another party, and that in this case, GWA has done so.
- (c) Contractor further understands that all the work called for under this bid is subject to the requirements of the Guam Public Utility Commission's Contract Review Protocol, and while GWA has secured approval for the initial three (3) year contract term, the additional two (2)

one (1) year term extensions are subject to further approval from the Guam Public Utilities Commission as a condition precedent to work being performed under said extensions.

- (d) SUB-CONTRACTORS: The Contractor agrees to bind every sub-contractor to the terms of the Contract Documents. Contractor further agrees that no sub-contractor Contractor may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-contractor and the Guam Waterworks Authority.
- (e) Contractor further understands that the price specified in this section shall remain fixed for the initial three (3) year term regardless of the amount of chemicals ordered by GWA.

SECTION 2. GWA AGREES:

To pay, and the Contractor agrees to accept in full payment for the performance of this Contract, for Cationic Polymer at a cost of \$1.63 per pound and Anionic Polymer at a cost of \$1.16 per pound as specified in GWA IFB No. 2019-17 CIF delivered pursuant to the bid on an "as-needed basis."

Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or
- (e) in the absence of an agreement between the parties, by a unilateral determination by the GWA General Manager of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the GWA General Manager in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions under Title 5, Chapter 5 of the Guam Code Annotated (Legal and Contractual Remedies).

For the purposes of this contract, no price adjustment shall be made unless the vendor can prove that their cost for the chemical specified in this bid has increased more than 50%.

For any request for a price adjustment, the Contractor shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations. Information that may be required under this provision include, but is not limited to,

invoices from the vendor's supplier for goods, proof of payment for such goods from the supplier or other proof as GWA may require which proves that the price has risen substantially enough to warrant a price modification.

SECTION 3. CONTRACT DOCUMENTS:

It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the Contract between the parties, hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows:

- a. Invitation to Bid
- b. Instructions to Contractors
- c. Bid
- d. Form of Non-Collision Affidavit
- e. Bid Bond
- f. Certification of Contractors Regarding Equal Employment Opportunity
- g. Formal Contract (which shall control in the event of conflict between this and any other contract or bid document)
- h. Performance Bond
- i. Payment Bond
- j. General Provisions
- k. Special Provisions
- l. Technical Specifications
- m. Plans
- n. Addenda/Amendments
- o. Answers to Questions (if GWA determines they are applicable).

SECTION 4. LIQUIDATED DAMAGES:

The Contractor further agrees to pay to GWA the amounts stated in the bid (or the minimum specified in Guam law) for failing, neglecting or refusing to complete the work within the time herein specified and said sum shall be paid for each consecutive calendar day therefore that the Contractor shall be in default after the time stipulated in the Contract for completing the work, ready for use and/or operations. Sundays and legal holidays will be excluded in determining the number of days in default.

SECTION 5. COVENANT AGAINST CONTINGENT FEES:

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give GWA the right to terminate the contract, or at its direction, deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commission's payable by Contractors upon

contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

SECTION 6. OTHER CONTRACTS:

GWA may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

SECTION 7. DISPUTES:

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the GWA General Manager whose decision shall be final and conclusive upon the parties thereto. In the meantime, the Contractor shall diligently proceed with the work as directed. However, the final decision of the GWA General Manager is appealable to the Guam Public Auditor as provided under 5 G.C.A. § 5427(e).

SECTION 8. CONTRACT BINDING:

It is agreed that this Contract and all the Covenants hereof shall insure to the benefit of and binding upon GWA and the Contractor respectively and his parties, successors, assignees and legal representative. Neither GWA nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the binding or works covered by this contract, or the land upon which the same is situated.

SECTION 9. GWA NOT LIABLE:

A. GWA, its officers, agents, employees and governing board assumes no liability for any accident or injury that may occur to the Contractor, Contractor's agents, employees, or to Contractor's property while on the job or otherwise en route to or from the job during any travel required by the terms of this agreement.

B. GWA, its officers, agents, employees and governing board shall not be liable to Contractor for any work performed by the Contractor prior to the written and signed approval of this Contract by the General Manager for GWA and the Contractor hereby expressly waives any and all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

SECTION 10. NOTICES:

All notices between the parties shall be in writing and shall be deemed served when personally delivered or when deposited in the mail, registered or certified, first-class postage prepaid, addressed as follows:

To: **GUAM WATERWORKS AUTHORITY**

Miguel C. Bordallo, P.E.
General Manager
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, 96913

To: **CONTRACTOR**

Eduardo R. Ilao
President
JMI-Edison
130 Siket St. Harmon Industrial Park
Tamuning, GU 96913
Tel: 649-5444
Fax: 649-5685

SECTION 11. TERMINATION:

Section 11.1 – Termination For Default:

(1) Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, GWA may notify the Contractor in writing of the delay or non-performance and if not cured in five (5) working days or any longer time specified in writing by the GWA, GWA may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the GWA may procure similar services in a manner and upon terms deemed appropriate by the GWA. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar services.

(2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the GWA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which GWA has an interest.

(3) Compensation. Payment for completed services delivered and accepted by the government and GWA shall be at the contract price. GWA may withhold from amounts due the Contractor such sums as the GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the GWA for the excess costs incurred in procuring similar goods and services (including the provision of these goods and services by GWA personnel). In the event that the Contractor fails to complete the work called for in the bid, fails to provide the goods or services in the allotted time, then Contractor shall pay to GWA ¼ of 1% of the total bid price per day as liquidated damages for the non-performance as specified by the Guam Code Annotated. The liquidated damages herein are not a penalty, but

rather a reasonable estimate by GWA of the loss it would suffer as a result of non-performance.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Contractor, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the GWA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Contractor (or sub-contractor) were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Failure of the Contractor (or sub-contractor) to perform for reasons other than cited above shall constitute a default of the Contractor unless cured by Contractor with a reasonable time. Upon request of the Contractor, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA and the government of Guam under the laws of Guam.

(5) Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause; the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subsection C, below.

(6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Section 11.2 – Termination For Convenience:

(1) Termination. GWA may, when the interest of the government so requires, terminate this contract in whole or in part, for the convenience of the government or GWA (including the provision of services by any sub-Contractor of the Contractor). GWA shall give thirty (30) days advance written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work (except in the case of Subcontractors where the Contractor is solely liable to GWA for their acts and/or non-performance or breach under this agreement) and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or

subcontracts to GWA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Work Product. Upon termination of the contract for the convenience of the government or GWA or for any other reason, Contractor shall transfer title and deliver to GWA all documents and reports, plans, drawings, information and other material produced by Contractor or any of its sub-contractors in connection with the performance of this contract. The Contractor shall protect and preserve property in its possession or in the possession of any of its sub-contractors in which the GWA or the Government of Guam has an interest.

(4) Compensation.

(a) The Contractor shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, GWA may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) GWA and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the GWA and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (2) of this Paragraph, GWA shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (2) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause;
- (iv) the reasonable settlement costs of the Contractor including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies

and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION 12. 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. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

SECTION 13. GOVERNING LAW AND VENUE:

The validity of this agreement, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of Guam. Moreover, any and all actions governing this agreement shall be brought in the Superior Court of Guam or the Guam District Court if applicable.

SECTION 14. OWNERSHIP OF DOCUMENTS:

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

SECTION 15. INDEMNITY:

Contractor agrees to save and hold harmless GWA, its board members, officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Contractor, Contractor's officers, agents (including subcontractors), servants or employees under this Agreement.

SECTION 16. GENERAL COMPLIANCE WITH LAWS:

The Contractor agrees that Contractor is to comply with all Federal and territorial laws, rules, regulations and ordinances applicable to the work being performed hereunder. Contractor shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Contractor is exempt under Guam law (must include legal citations proving exemption).

SECTION 17. ACCESS TO RECORDS AND OTHER REVIEW:

The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining 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 Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one (1) day prior to the conclusion of this Agreement. Each subcontract by Contractor pursuant to this agreement shall include a provision containing the conditions of this Section.

SECTION 18. SCOPE OF AGREEMENT.

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Contractor by the GWA and contains all of the covenants and terms between the parties with respect to such this project. 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 and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

SECTION 19. RESPONSIBILITY OF CONTRACTOR.

In addition to the other requirements set forth in the bid and this Contract, the Contractor shall be responsible for the professional and technical accuracy of all work and goods furnished under this contract. The Contractor shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her work.

GWA's review, approval, acceptance of, and payment for goods, fee, or 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 Contractor's failure of performance of this contract and the Contractor shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Contractor's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

SECTION 20. CHANGE ORDERS.

By written order, at any time, and without notice to Contractor's surety, GWA may, subject to all appropriate adjustments, make changes within the general scope of work of this Contract in any one or more of the following:

1. Drawings, designs or specifications, if the supplies or services to be furnished are to be specifically manufactured for GWA in accordance therewith;
2. Method of shipping or packing; or
3. Place of delivery.

If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that GWA promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Within thirty (30) days after receipt of a written change order, unless such period is extended by GWA in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless GWA is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GWA" of this Contract.

SECTION 21. STOP WORK ORDERS.

GWA may by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for in the Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is received by the Contractor, unless the parties agree to any longer period. Upon receipt of the order, the Contractor shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties have agreed, GWA shall either cancel the work order or terminate the work covered by the order as provided under the Termination for Default or Termination for Convenience Clauses contained in this contract.

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, or the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made to the delivery schedule or Contractor only if: (a) the stop work order results in an increase in the time required for performance or the contractor's cost; and (b) if the Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GWA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract. If a stop work order is not cancelled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed pursuant to the price adjustment clause of this Contract.

SECTION 22. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.

If any action or omission on the part of GWA requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of GWA, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

(a) the Contractor shall have given written notice to GWA:

- (i) prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission;
- (ii) within thirty (30) days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or
- (iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

(b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and

(c) the Contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

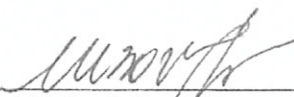
Nothing herein contained, however, shall excuse the Contractor from compliance with any rules of law precluding any GWA official or its Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION 23. EFFECTIVE DATE OF THIS CONTRACT.

This agreement shall take effect upon the date it is signed by both the General Manger and the Contractor and the date of this agreement shall be when the General Manager affixes his signature.

GUAM WATERWORKS AUTHORITY:



Miguel C. Bordallo, P.E.
GWA General Manager

Date: 12-11-19


CONTRACTOR:



Eduardo R. Ilao
Authorized Representative


Date: 11/14/19

Certified Funds Available:


b. TALING M. TAITANO, CPA, CGFM, CFO
Certifying Officer
Guam Waterworks Authority

Date: 12/05/19

Approved as to Form and Legality:



Kelly O. Clark
GWA General Counsel

Date: 12/6/19

Contract Amount: _____

Amount Certified: _____

Source of Funding: _____

// AMOUNT CERTIFIED:
CONTRACT AMOUNT - \$354,684.51
CONTINGENCY - \$35,468.45
TOTAL - \$390,152.96

// AUTHORIZED (3 YEARS):
CONTRACT AMOUNT - \$1,064,053.53
CONTINGENCY - \$106,405.35
TOTAL - \$1,170,458.88

//

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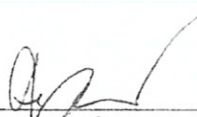
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**CORPORATE OR PARTNERSHIP CERTIFICATION
AS TO AUTHORIZATION TO BIND**

I, Genilie G. Ilao, certify that I am the Corporate Secretary of the corporation named as Contractor herein; and I further certify that Eduardo R. Ilao who signed this contract on behalf of the Contractor, is the President of said corporation by authority of said corporation of its governing body, and is within the scope of its corporate powers to bind said corporation to the terms and conditions of this Contract.

Signed: _____



Corporate Secretary

Date: _____

11 / 14 / 19

* * * * * **END OF CONTRACT** * * * * *

FORMAL CONTRACT


COPY
12-17-19

THIS AGREEMENT AND FORMAL CONTRACT is made and entered into this 11 day of December, 2019 by and between the **GUAM WATERWORKS AUTHORITY** ("GWA"), whose business address is Gloria B. Nelson Public Services Building, 688 Route 15 Mangilao, Guam 96913 and **TOTAL CHEMICAL RESOURCES, INC.** ("Contractor"), whose mailing address is P.O. Box 20730, Barrigada, GU 96921 licensed to conduct business on Guam and having Guam business license Number 1608013.

WITNESSETH, that whereas, GWA intends to purchase ACH Powder (Achieve D1012) from Total Chemical Resources, Inc. for the purpose of its use at GWA's Northern District, Hågatña and Agat Santa-Rita Wastewater Treatment Plants to ensure regulatory compliance as identified in GWA Bid No. 2019-17.

NOW THEREFORE, GWA and the Contractor for the considerations hereinafter set forth herein and in other documents associated with the performance hereunder, agree as follows:

SECTION 1. THE CONTRACTOR AGREES:

To provide ACH Powder (Achieve D1012) manufactured by Gulbrandsen Technologies (India) Pvt. Inc. as specified in GWA IFB No. 2019-17 at a cost to GWA of \$1.09 cents per pound CIF delivered pursuant to the bid on an "as-needed basis." Contractor agrees to maintain all time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Contractor also understands that it is responsible for all taxes and fees which may be due relative to payment or performance hereunder (including but not limited to, all employee, corporate and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing signed by both parties.

- (a) **CONTRACT TIME:** The Contractor agrees to commence work under this contract upon written notice to proceed and to provide the goods and services at the price specified above for a period of three (3) years from the date of the Notice to Proceed and as specified in the Bid Documents relative to the time, place and manner provided in the Bid Documents (as amended). Contractor agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health and that time is always of the essence.
- (b) The Contractor understands that this procurement was not an "all or nothing bid" and that GWA could award a portion of the work called for under the bid to another party, and that in this case, GWA has done so.
- (c) Contractor further understands that all the work called for under this bid is subject to the requirements of the Guam Public Utility Commission's Contract Review Protocol, and while GWA has secured approval for the initial three (3) year contract term, the additional two (2) one (1) year term extensions are subject to further approval from the Guam Public Utilities

Commission as a condition precedent to work being performed under said extensions.

- (d) SUB-CONTRACTORS: The Contractor agrees to bind every sub-contractor to the terms of the Contract Documents. Contractor further agrees that no sub-contractor Contractor may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-contractor and the Guam Waterworks Authority.
- (e) Contractor further understands that the price specified in this section shall remain fixed for the initial three (3) year term regardless of the amount of chemicals ordered by GWA.

SECTION 2. GWA AGREES:

To pay, and the Contractor agrees to accept in full payment for the performance of this Contract, for ACH manufactured by Gulbrandsen Technologies (India) Pvt. Inc. at a cost to GWA of \$1.09 per pound as specified in GWA IFB No. 2019-17 CIF delivered pursuant to the bid on an "as-needed basis."

Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or
- (e) in the absence of an agreement between the parties, by a unilateral determination by the GWA General Manager of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the GWA General Manager in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions under Title 5, Chapter 5 of the Guam Code Annotated (Legal and Contractual Remedies).

For the purposes of this contract, no price adjustment shall be made unless the vendor can prove that their cost for the chemical specified in this bid has increased more than 50%.

For any request for a price adjustment, the Contractor shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations. Information that may be required under this provision include, but is not limited to, invoices from the vendor's supplier for goods, proof of payment for such goods from the supplier

or other proof as GWA may require which proves that the price has risen substantially enough to warrant a price modification.

SECTION 3. CONTRACT DOCUMENTS:

It is hereby mutually agreed that the following list of instruments, plans, specifications and documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the Contract between the parties, hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows:

- a. Invitation to Bid
- b. Instructions to Contractors
- c. Bid
- d. Form of Non-Collision Affidavit
- e. Bid Bond
- f. Certification of Contractors Regarding Equal Employment Opportunity
- g. Formal Contract (which shall control in the event of conflict between this and any other contract or bid document)
- h. Performance Bond
- i. Payment Bond
- j. General Provisions
- k. Special Provisions
- l. Technical Specifications
- m. Plans
- n. Addenda/Amendments
- o. Answers to Questions (if GWA determines they are applicable).

SECTION 4. LIQUIDATED DAMAGES:

The Contractor further agrees to pay to GWA the amounts stated in the bid (or the minimum specified in Guam law) for failing, neglecting or refusing to complete the work within the time herein specified and said sum shall be paid for each consecutive calendar day therefore that the Contractor shall be in default after the time stipulated in the Contract for completing the work, ready for use and/or operations. Sundays and legal holidays will be excluded in determining the number of days in default.

SECTION 5. COVENANT AGAINST CONTINGENT FEES:

The Contractor warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give GWA the right to terminate the contract, or at its direction, deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commission's payable by Contractors upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business.

SECTION 6. OTHER CONTRACTS:

GWA may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

SECTION 7. DISPUTES:

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the GWA General Manager whose decision shall be final and conclusive upon the parties thereto. In the meantime, the Contractor shall diligently proceed with the work as directed. However, the final decision of the GWA General Manager is appealable to the Guam Public Auditor as provided under 5 G.C.A. § 5427(e).

SECTION 8. CONTRACT BINDING:

It is agreed that this Contract and all the Covenants hereof shall insure to the benefit of and binding upon GWA and the Contractor respectively and his parties, successors, assignees and legal representative. Neither GWA nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material man or other person can or will contract for or in any other manner have or acquire any lien upon the binding or works covered by this contract, or the land upon which the same is situated.

SECTION 9. GWA NOT LIABLE:

A. GWA, its officers, agents, employees and governing board assumes no liability for any accident or injury that may occur to the Contractor, Contractor's agents, employees, or to Contractor's property while on the job or otherwise en route to or from the job during any travel required by the terms of this agreement.

B. GWA, its officers, agents, employees and governing board shall not be liable to Contractor for any work performed by the Contractor prior to the written and signed approval of this Contract by the General Manager for GWA and the Contractor hereby expressly waives any

and all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

SECTION 10. NOTICES:

All notices between the parties shall be in writing and shall be deemed served when personally delivered or when deposited in the mail, registered or certified, first-class postage prepaid, addressed as follows:

To: **GUAM WATERWORKS AUTHORITY**

Miguel C. Bordallo, P.E.
General Manager
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, 96913

To: **CONTRACTOR**

Jerry A. Flores
Chief Financial Officer
Total Chemicals Resources
P.O. Box 20730
GMF, Barrigada, GU 96921-0730
Tel: 646-4742
Fax: 649-0447

SECTION 11. TERMINATION:

Section 11.1 – Termination For Default:

(1) Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, GWA may notify the Contractor in writing of the delay or non-performance and if not cured in five (5) working days or any longer time specified in writing by the GWA, GWA may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the GWA may procure similar services in a manner and upon terms deemed appropriate by the GWA. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar services.

(2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the GWA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which GWA has an interest.

(3) Compensation. Payment for completed services delivered and accepted by the government

and GWA shall be at the contract price. GWA may withhold from amounts due the Contractor such sums as the GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the GWA for the excess costs incurred in procuring similar goods and services (including the provision of these goods and services by GWA personnel). In the event that the Contractor fails to complete the work called for in the bid, fails to provide the goods or services in the allotted time, then Contractor shall pay to GWA ¼ of 1% of the total bid price per day as liquidated damages for the non-performance as specified by the Guam Code Annotated. The liquidated damages herein are not a penalty, but rather a reasonable estimate by GWA of the loss it would suffer as a result of non-performance.

(4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-contractor(s) of Contractor, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the GWA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the services to be furnished by the Contractor (or sub-contractor) were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Failure of the Contractor (or sub-contractor) to perform for reasons other than cited above shall constitute a default of the Contractor unless cured by Contractor with a reasonable time. Upon request of the Contractor, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA and the government of Guam under the laws of Guam.

(5) Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subsection C, below.

(6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Section 11.2 – Termination For Convenience:

(1) Termination. GWA may, when the interest of the government so requires, terminate this contract in whole or in part, for the convenience of the government or GWA (including the provision of services by any sub-Contractor of the Contractor). GWA shall give thirty (30) days advance written notice of the termination to the Contractor specifying the part of the contract terminated and when termination becomes effective.

(2) Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work (except in the case of Subcontractors where the Contractor is solely liable to GWA for their acts and/or non-performance or breach under this agreement) and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to GWA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(3) Right to Work Product. Upon termination of the contract for the convenience of the government or GWA or for any other reason, Contractor shall transfer title and deliver to GWA all documents and reports, plans, drawings, information and other material produced by Contractor or any of its sub-contractors in connection with the performance of this contract. The Contractor shall protect and preserve property in its possession or in the possession of any of its sub-contractors in which the GWA or the Government of Guam has an interest.

(4) Compensation.

(a) The Contractor shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Contractor fails to file a termination claim within one (1) year from the effective date of termination, GWA may pay the Contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) GWA and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the GWA and the contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (2) of this Paragraph, GWA shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (2) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Subparagraph (b) of this clause;

- (iv) the reasonable settlement costs of the Contractor including accounting, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts hereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.

(d) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION 12. 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. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

SECTION 13. GOVERNING LAW AND VENUE:

The validity of this agreement, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of Guam. Moreover, any and all actions governing this agreement shall be brought in the Superior Court of Guam or the Guam District Court if applicable.

SECTION 14. OWNERSHIP OF DOCUMENTS:

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

SECTION 15. INDEMNITY:

Contractor agrees to save and hold harmless GWA, its board members, officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Contractor, Contractor's officers, agents (including subcontractors), servants or employees under this Agreement.

SECTION 16. GENERAL COMPLIANCE WITH LAWS:

The Contractor agrees that Contractor is to comply with all Federal and territorial laws, rules, regulations and ordinances applicable to the work being performed hereunder. Contractor shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Contractor is exempt under Guam law (must include legal citations proving exemption).

SECTION 17. ACCESS TO RECORDS AND OTHER REVIEW:

The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining 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 Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one (1) day prior to the conclusion of this Agreement. Each subcontract by Contractor pursuant to this agreement shall include a provision containing the conditions of this Section.

SECTION 18. SCOPE OF AGREEMENT.

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Contractor by the GWA and contains all of the covenants and terms between the parties with respect to such this project. 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 and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

SECTION 19. RESPONSIBILITY OF CONTRACTOR.

In addition to the other requirements set forth in the bid and this Contract, the Contractor shall be responsible for the professional and technical accuracy of all work and goods furnished under this contract. The Contractor shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her work.

GWA's review, approval, acceptance of, and payment for goods, fee, or 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 Contractor's failure of performance of this contract and the Contractor shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Contractor's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

SECTION 20. CHANGE ORDERS.

By written order, at any time, and without notice to Contractor's surety, GWA may, subject to all appropriate adjustments, make changes within the general scope of work of this Contract in any one or more of the following:

1. Drawings, designs or specifications, if the supplies or services to be furnished are to be specifically manufactured for GWA in accordance therewith;
2. Method of shipping or packing; or
3. Place of delivery.

If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the Contractor from proceeding with the Contract as changed, provided that GWA promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Within thirty (30) days after receipt of a written change order, unless such period is extended by GWA in writing, the Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless GWA is prejudiced by the delay in notification. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GWA" of this Contract.

SECTION 21. STOP WORK ORDERS.

GWA may by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for in the Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is received by the Contractor, unless the parties agree to any longer period. Upon receipt of the order, the Contractor shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties have agreed, GWA shall either cancel the work order or terminate the work covered by the order as provided under the Termination for Default or Termination for Convenience Clauses contained in this contract.

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, of the period of the order or any extension thereof expires, the Contractor shall have

the right to resume work. An appropriate adjustment shall be made to the delivery schedule or Contractor only if: (a) the stop work order results in an increase in the time required for performance or the contractor's cost; and (b) if the Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GWA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract. If a stop work order is not cancelled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed pursuant to the price adjustment clause of this Contract.

SECTION 22. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.

If any action or omission on the part of GWA requiring performance changes within the scope of the contract constitutes the basis for a claim by the Contractor for additional compensation, damages, or an extension of time for completion, the Contractor shall continue with performance of the contract in compliance with the directions or orders of GWA, but by so doing, the Contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (a) the Contractor shall have given written notice to GWA:
 - (i) prior to the commencement of the work involved, if at that time the Contractor knows of the occurrence of such action or omission;
 - (ii) within thirty (30) days after the Contractor knows of the occurrence of such action or omission, if the Contractor did not have such knowledge prior to the commencement of the work; or
 - (iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the Contractor regards the act or omission as a reason which may entitle the Contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Contractor believes that additional compensation, damages, or an extension of time may be remedies to which the Contractor is entitled; and
- (c) the Contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

Nothing herein contained, however, shall excuse the Contractor from compliance with any rules

of law precluding any GWA official or its Contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

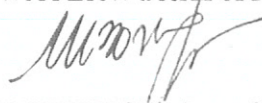
Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION 23. EFFECTIVE DATE OF THIS CONTRACT.

This agreement shall take effect upon the date it is signed by both the General Manager and the Contractor and the date of this agreement shall be when the General Manager affixes his signature.

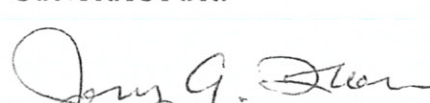
GUAM WATERWORKS AUTHORITY:

CONTRACTOR:



Miguel C. Bordallo, P.E.
GWA General Manager

Date: 12/11/19

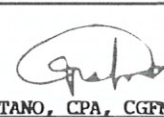


Jerry A. Flores
Authorized Representative

Date: 12/08/19


Certified Funds Available:

Approved as to Form and Legality:

b: 

TALING M. TAITANO, CPA, CGFM, CFO
Certifying Officer
Guam Waterworks Authority

Date: 12/05/19



Kelly O. Clark
GWA General Counsel

Date: 12/6/19

Contract Amount: _____

Amount Certified: _____

Source of Funding: _____

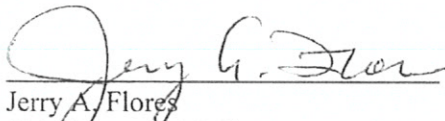
// AMOUNT CERTIFIED:
CONTRACT AMOUNT - \$875,845.52
CONGINGENCY - \$87,584.55
TOTAL - \$963,430.07

// AUTHORIZED: (3 YEARS):
CONTRACT AMOUNT - \$2,627,536.56
CONTINGENCY - \$262,753.66
TOTAL - \$2,890,290.22

//

**CORPORATE OR PARTNERSHIP CERTIFICATION
AS TO AUTHORIZATION TO BIND**

I, Jerry A. Flores, certify that I am the Corporate Secretary of the corporation named as Contractor herein; and I further certify that Jerry A. Flores who signed this contract on behalf of the Contractor, is the Managing Partner and Chief Financial Officer/Secretary Treasurer of said corporation by authority of said corporation of its governing body, and is within the scope of its corporate powers to bind said corporation to the terms and conditions of this Contract.

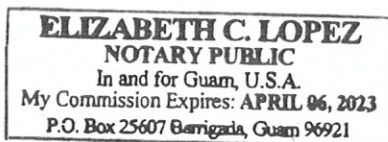

Jerry A. Flores
Chief Financial Officer
Total Chemical Resources, Inc.


11/08/19
Date

CITY OF HAGATNA)
) SS:
GUAM, U.S.A.)

On this 8 day of NOVEMBER, 2019, before me a Notary Public in and for Guam, U.S.A. personally appeared JERRY A. FLORES known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the date last above written.




NOTARY PUBLIC in and for Guam
My Commission expires 4/6/2023

***** END OF CONTRACT *****