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7 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

9 IN THE MATTER OF:

) **GWA DOCKET NO. 25-01**

10 **CONTRACT REVIEW**  
 11 **PROTOCOLS FOR THE GUAM**  
 12 **WATERWORKS AUTHORITY**

) **PETITION TO WAIVE CONTRACT**  
 ) **REVIW PROTOCOLS FOR ALL**  
 ) **PARTICAL CD PROCUREMENTS AND**  
 ) **CONTRACTS**

13 \_\_\_\_\_  
 14 **COMES NOW**, the GUAM WATERWORKS AUTHORITY (“GWA”), by and through  
 15 its counsel of record, THERESA G. ROJAS, ESQ., and hereby files its Petition seeking the PUC’s  
 16 approval to waive its Contract Review Protocol for all Partial Consent Decree procurements and  
 17 contracts resulting from and imposed by the Partial Consent Decree in *United States v. Guam*  
 18 *Waterworks Authority and the Government of Guam, Civil Case No. 24-000004*, in the U.S.  
 19 District Court for Guam, Civil Case No. 24-00004.

20 **I. BACKGROUND**

21  
 22 On January 31, 2024, the United States filed a civil action in the Guam U.S. District Court  
 23 (*Civil Case No. 24-000004*) against GWA and the Government of Guam seeking injunctive relief  
 24 and civil penalties for violations of GWA’s National Pollutant Discharge Elimination System  
 25 permits and the federal Clean Water Act. On the same date, the United States, GWA, and the  
 26 Governor of Guam filed a stipulated Partial Consent Decree (“Partial CD”) to quiet the issues, the  
 27 relief requested, and the penalties sought for the court’s consideration and review.  
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1 The Partial CD agreement obligates GWA, *inter alia*, to implement measures to address  
2 critical and priority problems within its wastewater collection system and to plan for long-term  
3 rehabilitation and treatment to upgrade its Hagåtña Wastewater Treatment Plan and ensure  
4 compliance with its discharge permits for its remaining wastewater treatment plants.

5 The specific measures within the Partial CD include both (1) Compliance and (2) Reporting  
6 Requirements to address the violations of the Clean Water Act alleged in the United States?  
7 January 31, 2024, Complaint. In August 2024, the federal court entered an Order accepting the  
8 Partial CD making it effective August 9, 2024. See **Exhibit A**. The August 9, 2024, Order triggered  
9 proximate and appropriate deadlines for GWA to address a long series of assessments, planning,  
10 reporting, rule updates, and construction measures within a 10-year period with deadlines to be  
11 completed within months following the effective date of the Partial CD.  
12

13 To date, GWA has started internal work on the assessments, planning, reporting, rule updates,  
14 and construction planning measures needed to comply with the Partial CD. And, GWA continues  
15 to plan upgrades for various required projects related to the repair of gravity mains, upsizing of  
16 pipes, assessments, rehabilitation and replacements of force mains, prioritized lift stations, sewer  
17 pump stations and other tasks to include plans for upgrades to the Hagatna Wastewater Treatment  
18 Plant; all of which require the execution of procurements and contracts.  
19

20 All are illustrative of GWA's good faith effort to comply with USEPA standards and the  
21 court's requirements within the Partial CD to avoid court-ordered stipulated fines and penalties.  
22 The stipulated fines and penalties to be assessed range from per-day AND per-violation fines for  
23 any failure by GWA to meet compliance milestones, interim milestones, reporting requirements,  
24 and required actions (which vary) to cure specific violations as listed within the Partial CD. See  
25 **Exhibit A. Section VII. Stipulated Penalties.**  
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## II. REQUEST FOR APPROVAL

In performing these upgrades, GWA is confronted with meeting strict deadlines. These deadlines include additional approvals and requests imposed by the PUC's Contract Review Protocol, as ordered by PUC Docket 00-04(1)(a-c) dated October 27, 2005, which fall outside of the court's requirements but are necessitated by Guam law, at 12 G.C.A. §12004, to ensure the PUC considers all reasonable procurements and their cost made by GWA for Guam's ratepayers.

The PUC's 2005 Contract Review Protocol Order requires that (a) all capital improvement projects, (b) all capital items, and (c) all professional service procurements in excess of \$1M, receive PUC approval before procurements can begin and contracts are executed. See **Exhibit B**. In GWA's recent Five-Year Rate case for FY 2025-2029 GWA presented information to the PUC and filed testimony to confirm that wastewater projects estimated at \$330,461,683 will focus on meeting the contractual and construction requirements of the 2024 Partial CD. These expenses, in part, necessitated rate increases already approved the PUC over the next Five-Year, and will trigger short-term financing and borrowing, already approved by the Guam Legislature and to be further approved by the PUC within immediate and succeeding borrowing periods. See, P.L. 37-103, June 5, 2024; and Rate Decision and Rate Case, GWA Docket No. 24-05, *In the Matter of GWA's FY2025-FY2029 Rate Application and Request for Rate Increases*, September 24, 2024.

Considering the substantial number of procurements and contracts to be issued to cover \$330M in Partial CD expenses over the next five-years, the succeeding five-years, and the federal Clean Water Act requirements to ensure GWA's systems complies with public safety and sanitation over the next 10-year period GWA requests the Commission waive its protocol, which in part, is also in place to "review the reasonableness" of proposed procurements. GWA's \$330M has undergone the Commission's thorough review and approval process to enable GWA to have

1 the adequate rate relief to comply with the US EPA's and the Court's requirements over the next  
2 five-year period and this review will continue to ensure GWA's has adequate rates to meet Partial  
3 CD compliance. In its August 9, 2024, Order the court also found that all projects required under  
4 the Partial CD were reasonable, prudent, and necessary.  
5

### 6 III. CONCLUSION

7  
8 Based on the foregoing, GWA respectfully requests the PUC waive its Contract  
9 Review Protocol for all Partial CD procurements and contracts resulting from the approved U.S.  
10 District Court of Guam, Partial Consent Decree, in Civil Case No. 24-00004, as it is reasonable,  
11 prudent, and necessary.  
12

13 **RESPECTFULLY SUBMITTED** this 4th day of October 2024.

14  
15 By: \_\_\_\_\_/s/\_\_\_\_\_  
16 **THERESA G. ROJAS**  
17 **GWA General Counsel**  
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18 IN THE DISTRICT COURT OF GUAM

19 )  
20 UNITED STATES OF AMERICA, )

21 Plaintiff, )

22 v. )

23 GUAM WATERWORKS AUTHORITY and )  
24 the GOVERNMENT OF GUAM, )

25 Defendants. )  
26 )  
27 )  
28 )

Civil Action No. 24-00004

PARTIAL CONSENT DECREE

**FILED**  
DISTRICT COURT OF GUAM  
AUG 29 2024 *Re 3/40*  
**JEANNE G. QUINATA**  
CLERK OF COURT

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1 Plaintiff United States of America, on behalf of the United States Environmental  
2 Protection Agency (“EPA”), has filed a complaint in this action concurrently with the lodging of  
3 this Consent Decree (the “Complaint”), alleging that Guam Waterworks Authority (“GWA” or  
4 “Defendant”) violated the conditions and limitations of GWA’s National Pollutant Discharge  
5 Elimination System (“NPDES”) permits EPA issued to GWA pursuant to Section 402 of the  
6 Clean Water Act (“CWA” or “Act”), 33 U.S.C. § 1342.

8 GWA, a public corporation, owns and operates a publicly owned treatment works  
9 (“POTW”) that collects, treats, and disposes of sanitary sewage for the Territory of Guam  
10 including certain U.S. military installations. The Complaint alleges that GWA is violating the  
11 Act by discharging untreated sewage from its Wastewater Collection System in violation of its  
12 NPDES permits. The Complaint also alleges that GWA is violating the Act by discharging  
13 sewage from its Northern District Wastewater Treatment Plant (“Northern District WWTP”) and  
14 Agaña/Hagåtña Wastewater Treatment Plant (“Hagåtña WWTP”) in violation of its NPDES  
15 permits. The Parties acknowledge that in 2022, GWA upgraded its Northern District WWTP to  
16 secondary treatment technology to address certain of these alleged violations. The Parties also  
17 acknowledge that GWA has initiated several other actions specified herein in Section V  
18 (Compliance Requirements).  
19  
20

21  
22 GWA has alleged certain hardships and provided documentation to the United States,  
23 detailing its financial hardship and other limitations on its ability to make infrastructure  
24 improvements due to Guam regulatory, labor, and construction-related constraints.

25 The Government of Guam (“Guam”) is joined as a statutory defendant in this action  
26 pursuant to CWA Section 309(e), 33 U.S.C. § 1319(e), and shall be liable for payment of any  
27 judgment or any expenses incurred as a result of complying with any judgment entered against  
28

1 GWA, to the extent that Guam's laws and regulations prevent GWA from raising revenues  
2 needed to comply with such judgment.

3 Defendants do not admit any liability to the United States arising out of the transactions  
4 or occurrences alleged in the Complaint.

5 The Parties recognize, and the Court by entering this Consent Decree finds, that this  
6 Consent Decree has been negotiated by the Parties in good faith and will avoid litigation among  
7 the Parties regarding certain relief with respect to the claims alleged in the Complaint, and that  
8 this Consent Decree is fair, reasonable, and in the public interest.

9 The Parties agree that certain further relief to address the claims alleged in the Complaint  
10 shall be addressed in a future consent decree or by litigation, including but not limited to  
11 implementation of the approved Force Main Action Plan, completion of Tier 2, 3, and 4 Pump  
12 Station Projects, Gravity Main Replacement or Rehabilitation of at least 35 additional "unique  
13 miles," additional wet and dry flow monitoring for the Tumon Basin, and upgrading the Hagåtña  
14 WWTP to secondary treatment. The Parties intend to reengage in negotiations regarding the  
15 remaining injunctive relief and payment of an appropriate civil penalty no later than seven (7)  
16 years following the Effective Date of this Consent Decree.

17 NOW, THEREFORE, before the taking of any testimony, without the adjudication or  
18 admission of any issue of fact or law except as provided in Section I (Jurisdiction and Venue),  
19 and with the consent of the Parties, IT IS HEREBY ADJUDGED, ORDERED, AND DECREED  
20 as follows:

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25 **I. JURISDICTION AND VENUE**

26 1. This Court has jurisdiction over the subject matter of this action, pursuant to  
27 28 U.S.C. §§ 1331, 1345, and 1355, and Section 309(b) and (e) of the Act, 33 U.S.C. § 1319(b)  
28 and (e), and over the Parties. Venue lies in this District pursuant to CWA Section 309(b), 33



1 U.S.C. § 1319(b), and 28 U.S.C. §§ 1391(b) and (c) and 1395(a), because GWA is located in this  
2 judicial district, and the violations alleged in the Complaint are alleged to have occurred in this  
3 judicial district. For purposes of this Decree, or any action to enforce this Decree, Defendants  
4 consent to the Court's jurisdiction over this Decree and any such action and over Defendants and  
5 consent to venue in this judicial district.

6  
7 2. For purposes of this Consent Decree, Defendants agree that the Complaint states  
8 claims upon which relief may be granted pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

9 3. EPA has notified the Government of Guam of this action under CWA Section  
10 309(b), 33 U.S.C. § 1319(b).

## 11 II. APPLICABILITY

12  
13 4. The obligations of this Consent Decree apply to and are binding upon the United  
14 States and upon GWA, and any successors, assigns, or other entities or persons otherwise bound  
15 by law, and upon Guam and its representatives and any successors, assigns, or other entities or  
16 persons otherwise bound by law, when liability is incurred pursuant to Section 309(e) of the Act,  
17 33 U.S.C. § 1319(e).

18  
19 5. No transfer of ownership or operation of GWA's POTW, whether in compliance  
20 with the procedures of this Paragraph or otherwise, shall relieve GWA of its obligation to ensure  
21 that the terms of the Decree are implemented. At least thirty (30) Days prior to such transfer,  
22 GWA shall provide a copy of this Consent Decree to the proposed transferee and shall  
23 simultaneously provide written notice of the prospective transfer, together with a copy of the  
24 proposed written agreement, to EPA and the United States, in accordance with Section XIII  
25 (Notices). Any attempt to transfer ownership or operation of the POTW without complying with  
26 this Paragraph constitutes a violation of this Decree.  
27

28 6. GWA shall provide a copy of this Consent Decree to all officers, employees, and



1 SSO.

2 "Bypass," as defined by 40 C.F.R. § 122.41(m), shall mean the intentional diversion of  
3 waste streams from any portion of a Wastewater Treatment Plant.

4 "Complaint" shall mean the Complaint filed by the United States in this action.

5 "Consent Decree" or "Decree" shall mean this Decree and all Appendices attached hereto  
6 (listed in Section XXIII).

7  
8 "Consequence of Failure" or "COF" shall mean the outcome of an asset failure if a  
9 failure should occur.

10 "Consequence of Failure Score" or "COF Score" shall mean a numerical value of 1 to 5  
11 assigned to an asset based on an analysis of the consequence of an asset failure. Calculating  
12 consequence of failure involves obtaining information about an asset's original design, material,  
13 installation, and operating parameters in conjunction with an assessment or estimate of its  
14 potential impact to human health, the environment, and economy were the asset to fail. Criteria  
15 factors can be given a score ranging from 1 (low impact of failure) to 5 (high impact of failure)  
16 and a weight, which allow some factors to be given more importance than others.

17  
18  
19 "Day" shall mean a calendar day unless expressly stated to be a business day. In  
20 computing any period of time under this Consent Decree, where the last day would fall on a  
21 Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next  
22 business day.

23 "Defendants" shall mean Guam Waterworks Authority and the Government of Guam.

24 "Depth to diameter (d/D) ratio" shall mean the depth of height of water within the pipe  
25 segment divided by the inner diameter of the pipe segment.

26  
27 "EPA" shall mean the United States Environmental Protection Agency and any of its  
28

1 successor departments or agencies.

2 “Effective Date” shall have the definition provided in Section XIV.

3 “Facility” shall mean GWA’s “treatment works” or “Publicly Owned Treatment Works”  
4 or “POTW”, as those terms are defined in 33 U.S.C. § 1292(2)(a) and 40 C.F.R. § 403.3(q).

5 “Flow Model” shall mean the hydrologic and hydraulic model that: (a) takes inputs  
6 relating to weather conditions and the Wastewater Collection System’s operating parameters;  
7 and (b) predicts flows in the Wastewater Collection System and Wastewater Treatment Plants.

8 “FOG” shall mean fats, oils, and grease, which are animal- and plant-derived substances  
9 that may solidify or become viscous due to temperature and other factors.

10 “Food Service Establishment” or “FSE” shall mean any facility or lessor to a facility  
11 preparing and/or serving food for commercial use or sale, including but not limited to,  
12 restaurants, coffee shops, public or private school cafeterias, lunchrooms, luncheonettes, lunch-  
13 counters, in-plant or employee eating establishments, bars, cafes, taverns, sandwich stands, drink  
14 stands, temporary food service establishments, mobile food service establishments, food  
15 preparation kitchens, any cafeteria or similar facility and any other eating establishment with  
16 food preparation such as organizations, clubs, boardinghouses, guesthouses, or concessions  
17 within any public market that gives or sells food or beverages to the public, guests, patrons or  
18 employees, as well as kitchens in which food is prepared on the premises for serving elsewhere,  
19 including cafeteria functions, home manufacturers and caterers, and home food industries, and  
20 food packaging, meat processing, and meat packing facilities.

21 “Force Main” shall mean any pipe that receives, contains, and conveys, under pressure,  
22 wastewater from the discharge side of a pump.

23 “Gravity Main” shall mean any pipe that receives, contains, and conveys wastewater,  
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1 which is not normally under pressure, but is intended to flow unassisted under the influence of  
2 gravity.

3 "Grease Removal Device" or "GRD" shall mean a concrete, fiberglass, or fiberglass-  
4 reinforced plastic structure designed to separate and retain grease and oil from the wastewater  
5 stream. GRDs are multiple-compartment units with inlet and outlet baffles and/or T-pipes, and  
6 inspection ports.

7  
8 "GWA" shall mean the Guam Waterworks Authority.

9 "Infiltration" shall mean water other than wastewater that enters a Wastewater Collection  
10 System during wet weather conditions from the ground through such means as defective pipes,  
11 pipe joints, connections, or manholes.

12  
13 "Inflow" shall mean water other than wastewater that enters a Wastewater Collection  
14 system during wet weather conditions from illicit or unpermitted sources other than Infiltration,  
15 such as, but not limited to, roof leaders, foundation drains, yard drains, area drains, drains from  
16 springs and swampy areas, manhole covers, cross connections between sanitary sewers and  
17 storm sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or  
18 drainage.

19  
20 "Inflow and Infiltration" or "I&I" shall mean all water from both Infiltration and Inflow  
21 without distinguishing the source.

22 "Lateral" shall mean that portion of a Gravity Main lateral line that is owned by GWA  
23 and located between: (i) the Gravity Main and (ii) either the property line of a residence or  
24 business, or the boundary of an established easement.

25  
26 "Likelihood of Failure" or "LOF" shall mean the statistical probability that defects could  
27 cause an asset to fail, inhibiting its ability to effectively convey Municipal Sewage based on the  
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1 observed or estimated condition of the asset.

2 “Likelihood of Failure Score” or “LOF Score” shall mean a numerical value of 1 to 5,  
3 assigned to an asset based on the observed or estimated condition of the asset. Calculating  
4 likelihood of failure involves obtaining information about an asset’s original design, material,  
5 installation, and operating parameters in conjunction with an assessment or estimate of its  
6 potential current condition. Criteria factors can be given a score ranging from 1 (good) to 5  
7 (poor) and a weight, which allow some factors to be given more importance than others.

9 “Municipal Sewage” shall mean domestic, commercial, and industrial wastewaters.

10 “NASSCO” shall mean the National Association of Sewer Service Companies.

11 “NPDES Permit” or “Permit” as used herein shall mean the National Pollutant Discharge  
12 Elimination System Permits issued to GWA for the Facility (Permit Numbers GU0020087,  
13 GU0020222, GU0020141, GU0020273), or any successor permit(s).

15 “Paragraph” shall mean a portion of this Decree identified by an Arabic numeral.

16 “Parties” shall mean the United States, GWA, and the Government of Guam.

17 “Power Supply” shall mean an electrical power supply system for a Pump Station in  
18 which the sizing, design, and installation of the system complies with National Electric Code  
19 requirements; all electrical components, panels and enclosures shall be listed by Underwriter’s  
20 Laboratory and/or rated by the National Electrical Manufacturer’s Association (“NEMA”) as  
21 appropriate for Pump Stations; all electrical components, panels and enclosures shall be  
22 protected from physical damage by the 100 year flood, all electrical control panels shall be  
23 enclosed in protective enclosure panels that are NEMA rated for harsh, corrosive environments,  
24 and wastewater pumping stations should remain fully operational during the 25 year flood.

27 “Professional Engineer” shall mean a Professional Engineer registered on Guam pursuant  
28

1 to the requirements of the National Council of Examiners for Engineers and Surveyors or  
2 equivalent international organization standards as approved by EPA in the appropriate discipline  
3 (e.g., civil, mechanical, electrical) for the work being undertaken.

4 "Preferred Operating Region" or "POR" shall mean the range of flows over which a  
5 pumped flow is highly controllable and is established by the pump manufacturer in accordance  
6 with ANSI/HI 9.6.3 Rotodynamic (Centrifugal and Vertical) Pumps – Guideline for Allowable  
7 Operating Region. Within this range, the service life of the pump is not significantly affected by  
8 hydraulic loads, vibration, or flow separation.

10 "Pretreatment Standard" shall mean general Pretreatment Standards in 40 C.F.R. Part  
11 403, categorical Pretreatment Standards, local limits, and State and local law.

13 "Publicly Owned Treatment Works" or "POTW" shall mean the treatment works, as  
14 defined in 33 U.S.C. § 1292(2)(a) and 40 C.F.R. § 403.3(q), that is owned and operated by  
15 GWA.

16 "Pump Station" shall mean facilities comprised of pumps that lift wastewater to a higher  
17 hydraulic grade line, including all related electrical, mechanical, and structural systems necessary  
18 to the operation of that Pump Station.

20 "Rehabilitation" or "Rehabilitate" shall mean:

- 21 a. For Gravity Mains: the renewal or reconstruction of a Gravity Main from node to  
22 node, including all manholes and Laterals connected to the Gravity Main;  
23  
24 b. For Pump Stations: the renewal or reconstruction of a Pump Station;  
25  
26 c. For Force Mains: the renewal or reconstruction of a Force Main pipe segment;

27 "Repair" shall mean:

- 28 a. For Gravity Mains: the work of fixing a portion of a Gravity Main that does not

1 result in Rehabilitation of the Gravity Main;

2 b. For Pump Stations: the work of fixing a portion of a Pump Station that does not  
3 result in Rehabilitation of the Pump Station;

4 c. For Force Mains: the work of fixing a portion of a Force Main that does not result  
5 in Rehabilitation of the Force Main;

6 “Replace” or “Replacement” shall mean:

7 a. For Gravity Mains: the work of demolishing a Gravity Main and installation of a  
8 new Gravity Main in its place, including all manholes and Laterals connected to the Gravity  
9 Main;

10 b. For Pump Stations: the work of demolishing an entire Pump Station, including the  
11 wet well, and installation of a new Pump Station in its place;

12 c. For Force Mains: the work of demolishing a Force Main and installation of a new  
13 Force Main in its place;

14 “Sanitary Sewer Overflow” or “SSO” shall mean an overflow, spill, diversion, or release  
15 of wastewater from or caused by GWA’s Wastewater Collection System, except that the term  
16 “SSO” does not include wastewater backups into buildings caused solely by a blockage or other  
17 malfunction in a building lateral that is privately owned.

18 “Section” shall mean a portion of this Decree identified by a Roman numeral.

19 “State,” as defined in 33 U.S.C. § 1362(3), shall mean the Territory of Guam.

20 “Ten States Standards” shall mean the *Recommended Standards for Wastewater  
21 Facilities, Policies for the Design, Review, and Approval of Plans and Specifications for  
22 Wastewater Collection and Treatment Facilities, 2014 Edition* or any revisions thereof.

23 “United States” shall mean the United States of America, acting on behalf of EPA.  
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1           “Wastewater Collection System” shall mean all parts of the wastewater collection system  
2 owned or operated by GWA that are intended to convey Municipal Sewage to GWA’s  
3 Wastewater Treatment Plants, including, without limitation, sewers, pipes, Gravity Mains, Pump  
4 Stations, lift stations, manholes, Force Mains, and appurtenances associated with each of the  
5 above.

6           “Wastewater Treatment Plant” or “WWTP” shall mean that portion of GWA’s POTW  
7 that is designed to provide treatment (including recycling and reclamation) of Municipal Sewage  
8 and industrial waste.  
9

## 10                               V.       COMPLIANCE REQUIREMENTS

11           10.    Implementation of Compliance Requirements. GWA shall implement the  
12 compliance requirements in this Section in accordance with Section III (Objectives) of this  
13 Decree and by the deadlines set forth herein.  
14

### 15                               A.    WASTEWATER COLLECTION SYSTEM

16           11.    Gravity Main Condition Assessment. GWA shall complete a closed-circuit  
17 television (“CCTV”) inspection and submit a Gravity Main Condition Assessment Report  
18 regarding all of its Gravity Mains in accordance with the following schedule:  
19

20           a.       Within 210 days of the Effective Date, as an interim milestone, GWA  
21 shall complete CCTV inspection of all Gravity Mains in GWA’s Wastewater Collection System,  
22 except for pipe segments that are inaccessible for CCTV inspection, which are identified in  
23 Appendix A. For pipe segments identified in Appendix A, GWA shall conduct pipe inspections  
24 utilizing acoustic-based sewer pipe assessment technology. GWA shall not use CCTV  
25 recordings completed before January 1, 2013. If any of the pipe segments identified in Appendix  
26 A become accessible for CCTV inspection, GWA shall complete CCTV inspection of those pipe  
27 segments within 30 Days and report on that inspection in the next semi-annual report.  
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1           b.       Within nine (9) months of the Effective Date, GWA shall complete and  
2 document an assessment of each CCTV inspection for all Gravity Mains in GWA's Wastewater  
3 Collection System in accordance with NASSCO standards. For the pipe segments identified in  
4 Appendix A, GWA shall complete and document an assessment of each acoustic-based pipe  
5 segment inspection and compare the results with the assessment based on CCTV inspection of  
6 the Wastewater Collection System in accordance with good engineering practices.  
7

8           c.       Within eighteen (18) months of the Effective Date, as an interim  
9 milestone, GWA shall submit to EPA for review and approval a Gravity Main Condition  
10 Assessment Report that evaluates, at a minimum, NASSCO rating, failure mode, Likelihood of  
11 Failure, Consequence of Failure, criticality analysis, and remaining useful life of all Gravity  
12 Mains in GWA's Wastewater Collection System, and recommends Gravity Main Repair,  
13 Rehabilitation, and Replacement based upon those evaluations and good engineering practices.  
14

15       12.    Gravity Main Repair, Rehabilitation, and Replacement Program. GWA shall  
16 implement a Gravity Main Repair, Rehabilitation, and Replacement program in accordance with  
17 this Paragraph.  
18

19           a.       Acute Defects. As a compliance milestone, GWA shall Repair,  
20 Rehabilitate, or Replace Gravity Main segments or assets with Acute Defects as soon as possible,  
21 but no later than 18 month(s) after GWA identifies the Acute Defect for GWA in-house Repair,  
22 Rehabilitation, or Replacement, and no later than 24 months after GWA identifies the Acute  
23 Defect for a Repair, Rehabilitation, or Replacement to be performed by external contractors.  
24

25           b.       Rehabilitation or Replacement. As a compliance milestone, GWA shall  
26 Rehabilitate or Replace a total of thirty "unique miles" of Gravity Mains within ten (10) years of  
27 the Effective Date. Rehabilitation or Replacement Work completed up to one (1) year prior to  
28

1 lodging of this Consent Decree may be credited toward the mileage milestones. As interim  
2 milestones, GWA shall Rehabilitate or Replace:

3 i. at least ten “unique miles” by September 1, 2027;

4 ii. at least twenty “unique miles” by September 1, 2030;

5 c. Work Plan. Within the earlier of three (3) months of the EPA’s approval  
6 of the Gravity Main Condition Assessment Report or twenty-four (24) months of the Effective  
7 Date, as an interim milestone, GWA shall submit a Gravity Main Work Plan to EPA, for review  
8 and approval, that organizes all necessary Gravity Main Repair, Rehabilitation, and Replacement  
9 work recommended in its Gravity Main Condition Assessment Report into an appropriate  
10 prioritization list that prioritizes work with the goal of preventing SSOs and limiting I&I: Acute  
11 Defect, short-term, or long-term. GWA shall include in the Gravity Main Work Plan a schedule  
12 for all Acute Defect and Short-Term Gravity Main Repair, Rehabilitation and Replacement work  
13 for the next five years based on its prioritization list. GWA shall schedule all Acute Defect work  
14 in accordance with Paragraph 12.a.

15 d. Annual Evaluation. GWA shall evaluate its Gravity Main Work Plan  
16 prioritization list and work schedule as needed, but not less than annually. The annual evaluation  
17 shall be submitted to EPA for its information and shall be completed by September 30 of each  
18 calendar year. Any modifications to the work schedules are subject to EPA review and approval.

19 13. a. Long-Term Gravity Main Plan. Within nine (9) years of the Effective  
20 Date, as a compliance milestone, GWA shall submit to EPA for review and approval a Long-  
21 Term Gravity Main Plan that: (i) sets out a schedule for the design and construction of all  
22 necessary Long-Term Gravity Main Rehabilitation and Replacement work in its Gravity Main  
23 Work Plan prioritization list; (ii) meets the capacity criterion established in the Storm Technical  
24  
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28

1 Memorandum dated January 4, 2023 (the “Storm Technical Memorandum”); and (iii) proposes  
2 an annual commitment of Gravity Main mileage of at least three (3) miles per year for  
3 Rehabilitation or Replacement. GWA’s Long-Term schedule and work shall take into account  
4 the Capacity Assurance Program and GWA’s Capacity Evaluation Report and Flow Model in  
5 Paragraph 14.b, below. GWA shall provide the associated cost estimates for all work under the  
6 Plan with as much specificity as possible.  
7

8           b.     Capacity Assurance Program. GWA’s POTW shall not exceed the  
9 POTW’s design capacity. All pipe segments in GWA’s Gravity Mains shall meet the capacity  
10 criterion established in the Storm Technical Memorandum. Based on the Flow Model results  
11 and the Capacity Evaluation Report results, GWA shall develop and submit as part of its Long-  
12 Term Gravity Main Plan a Capacity Assurance Program (“CAP”). The CAP shall include a plan  
13 and schedule, for EPA review and approval, for work necessary to ensure that GWA’s  
14 Wastewater Collection System and POTW will have adequate capacity.  
15

16           14.   Capacity Evaluation Report. Within eighteen (18) months of the Effective Date,  
17 as an interim milestone, GWA shall complete a Capacity Evaluation Report that identifies  
18 current or potential future flow bottlenecks within the Wastewater Collection System. The  
19 Capacity Evaluation Report shall:  
20

21           a.     Include a hydraulic assessment;

22           b.     Include a Flow Model for GWA’s POTW, including both the Wastewater  
23 Collection System and WWTPs, that is calibrated according to the Chartered Institution of Water  
24 and Environmental Management (CIWEM) Code of Practice for the Hydraulic Modelling of  
25 Urban Drainage Systems Version 01 and is consistent with the Storm Technical Memorandum.  
26 The Flow Model calibration shall incorporate: (i) new data gathered through December 31, 2022;  
27  
28

1 (ii) physical changes to the Wastewater Collection System and changes to capacity at the POTW  
2 through December 31, 2022; (iii) additional wet and dry flow monitoring for the Central Basin;  
3 and (iv) Flow Model verification. As part of the Capacity Evaluation Report, GWA shall  
4 provide a detailed Flow Model calibration description that: (i) details how the Flow Model was  
5 calibrated in accordance with CIWEM best practices; (ii) summarizes the data used to calibrate  
6 the Flow Model; and (iii) describes the confidence of the Flow Model;

8 c. Identify, at a minimum, the hydraulic capacities of the POTW, and  
9 compare those capacities to existing and future projected average and peak flows in dry and wet  
10 weather; and

11 d. Identify those portions of the POTW that are expected to cause or  
12 contribute to SSOs or prohibited Bypasses at the WWTPs under existing and future projected  
13 average and peak flows in dry and wet weather, and prioritize those portions, under current or  
14 projected future conditions, to meet the capacity criterion in the Storm Technical Memorandum.

15 15. Capacity Assurance Projects. Within seven (7) years of the Effective Date, as a  
16 compliance milestone, GWA shall complete necessary Rehabilitation, Replacement or sewer  
17 pipe upsizing to assure adequate capacity for peak wet weather flows at the Wastewater  
18 Collection System locations identified in subparagraphs 15.a-e of this Paragraph and any other  
19 critical capacity-limited segments in the Wastewater Collection System identified in GWA's  
20 Capacity Evaluation Report submitted to EPA pursuant to Paragraph 14 (collectively, "Capacity  
21 Assurance Projects"). GWA shall ensure each Capacity Assurance Project assures adequate pipe  
22 capacity, meaning that pipe segments have a depth to diameter (d/D) ratio meeting the capacity  
23 criterion established in the Storm Technical Memorandum.

24 a. Route 12 at Route 2;

1           b.     Marine Corps Drive between Route 4 and Highway 6;

2           c.     Barrigada Pump Station;

3           d.     Route 1 (Dededo). GWA shall complete the Northern District Capacity

4 Replacement – Phase 1 project along the highlighted pipe segments in Appendix B, and submit a  
5 proposed schedule for the remaining Route 1 projects for EPA review and approval;

6  
7           e.     Route 4 (between Pump Station 18 and Pump Station 14).

8           16.    Capacity Assurance Report. After completing all of the Capacity Assurance  
9 Projects listed above in Paragraph 15, GWA shall incorporate those Capacity Assurance Projects  
10 into GWA's Flow Model and shall recalibrate the Flow Model using best industry practices.

11           Within six (6) months of completion of the projects in Paragraph 15, as an interim milestone,  
12 GWA shall submit a Capacity Assurance Report to EPA to evaluate whether the capacity  
13 projects remedied the capacity issues at each of the locations listed in Paragraph 15.a-e, and to  
14 identify any other capacity bottlenecks within the Wastewater Collection System, particularly  
15 those locations in need of Rehabilitation, Replacement, or sewer pipe upsizing to assure capacity.

16           The Capacity Assurance Report shall include a proposed schedule, which shall be subject to  
17 EPA's review and approval, to implement Rehabilitation, Replacement, and improvement  
18 projects to address any identified capacity issues.

19           21.    Force Main Inventory. Within 60 days of the Effective Date, as an interim  
20 milestone, GWA shall submit to EPA a list of all Force Main segments in its entire Wastewater  
21 Collection System that identifies each segment's location, properties (flow rate, pipe material,  
22 diameter, length, installation date, etc.), known condition, last inspection date, and type of  
23 inspection conducted. Together with this list, GWA shall submit to EPA a GIS map that  
24 includes the locations of all Force Mains.  
25  
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1           18.    Force Main Condition Assessment. Within three (3) years of the Effective Date,  
2 as an interim milestone, GWA shall complete a Force Main condition assessment for the Force  
3 Mains identified in Table A, below. As part of the Force Main condition assessment, GWA shall  
4 ensure that the condition assessment steps detailed below are performed for all Table A Force  
5 Mains, valves, air relief valves, drains, connections, fittings and appurtenances associated with  
6 the Force Main, and is conducted, stamped, and certified by a Professional Engineer. At a  
7 minimum, GWA shall:

- 9           a.       Inspect and determine functionality;
- 10           b.       Identify defects such as inoperable valves, exposed corrosion, leaks,  
11 cracks, or other conditions that could contribute to the failure of the Force Main;
- 12           c.       Evaluate all metallic (cast iron, ductile iron, steel, etc.) and concrete Force  
13 Mains, fittings, and appurtenances to determine whether corrosion protective measures are  
14 necessary. Appropriate corrosion protective measures include:
  - 15           i.       Targeted pipeline/component replacement;
  - 16           ii.       Adding protective coatings;
  - 17           iii.       Installing an internal pipe lining; and
  - 18           iv.       Adding targeted cathodic protection.

19           d.       Conduct an external pipe inspection of the exterior of each Force Main at  
20 each location where the pipe segment is exposed to assess structural damage and the integrity of  
21 protective coatings using visual inspection and technology suitable to the particular pipe to  
22 identify possible defects such as leaks, cracks, corrosion, erosion, pinholes, coating damage,  
23 delamination or any other conditions that could contribute to the failure of the Force Main. For  
24 purposes of this Paragraph, suitable technology shall be no less than ultrasonic testing, magnetic  
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28

1 flux leakage, or broadband electromagnetic testing, or a technology that EPA and GWA agree is  
2 equivalent to those technologies in terms of its ability to meet the stated objectives of inspection  
3 and assessment. The requirements of subparagraph d of this Paragraph do not apply to Force  
4 Mains that are, as of the Effective Date, in the engineering design phase of a construction  
5 project;

6  
7 e. Conduct pressure testing evaluations on all segments of Table A Force  
8 Mains that have a LOF greater than 3.4, using accepted engineering methods suitable for each  
9 pipe to identify possible defects or any other conditions that could contribute to the failure of the  
10 Force Main. The purpose of the pressure testing evaluation is to determine if the design,  
11 construction, and materials are sufficient to withstand the maximum predicted transient pressures  
12 that may be expected to occur under normal, peak flow, and emergency (shut-down and start-up)  
13 conditions. This evaluation shall include, but not necessarily be limited to, (i) a review of  
14 available pressure data, and (ii) an evaluation using actual pressure measurements of the transient  
15 pressures that occur during the range of anticipated operating conditions. Any actual pressure  
16 measurements shall be limited to the range of operating conditions that is both prudent and  
17 practicable. GWA shall follow up on observed conditions that are likely to be a source of  
18 leakage. The methodologies employed will be appropriate to the type of condition and location  
19 of the suspected leakage. The requirements of subparagraph e of this Paragraph do not apply to  
20 Force Mains that are, as of the Effective Date, in the engineering design phase of a construction  
21 project;

22  
23 f. Identify the extent to which defects affect the performance of the Force  
24 Main, through performance indicators such as unusual noise, vibrations, pipe and pipe joint  
25 leakage and displacement, valve arrangement and leakage, lift station operation and  
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1 performance, discharge pump rates and pump speed, and pump suction and discharge pressures;

2 g. Review operating data, such as operating pressures, pump run times, and  
3 flow rates, as well as reports of physical inspections, which can reveal reduced Force Main  
4 capacity and other performance issues to determine if there is an actual or potential significant  
5 reduction in capacity; and

6 h. Determine the Force Main's probable time of failure for the following four  
7 failure modes based on the information gathered in subparagraphs a-f of this Paragraph:  
8 condition or structural failure, end of useful life, capacity, and not meeting an established level of  
9 service.  
10

11 19. Force Main Assessment Report. Within three-and-a-half (3.5) years of the  
12 Effective Date, as an interim milestone, for each Force Main that was assessed pursuant to  
13 Paragraph 18, GWA shall submit to EPA, for review and approval, a Force Main Assessment  
14 Report that:  
15

16 a. Describes the method and extent of each assessment conducted under  
17 Paragraph 18, including valve, exposed fitting, and exposed appurtenance inspections; corrosion  
18 protection evaluations; external pipe inspections; pressure testing evaluations; and leak detection  
19 tests. The report must provide a narrative of approach and methodology for inspections,  
20 inspection locations and, in an appendix to the report, provide the field data collected pursuant to  
21 Paragraph 18.  
22

23 b. Describes the results of each assessment for each Force Main conducted  
24 pursuant to inspections referenced in Paragraph 18, including valve, exposed fitting, and exposed  
25 appurtenance inspections; corrosion evaluations; external pipe inspections, pressure testing  
26 evaluations, and leak detection tests;  
27  
28

1 c. Identifies, and quantifies, where practicable, observed or measured  
2 conditions such as leaks, cracks, corrosion, erosion, pinholes, coating delamination, joint  
3 deflections, pipe deformation, wall-thinning, or any other conditions that could contribute to the  
4 failure of the Force Main;

5 d. Includes an inventory of all pipe segments with observed conditions and  
6 photo documentation of Force Main defects whenever possible;

7 e. Includes a summary of defects that affect the performance of the Force  
8 Main, through performance indicators such as unusual noise, vibrations, pipe and pipe joint  
9 leakage and displacement, valve arrangement and leakage, lift station operation and  
10 performance, discharge pump rates and pump speed, and pump suction and discharge pressures;

11 f. Includes a description of each Force Main's failure modes, and the  
12 probable time of failure, based on the information gathered through the assessments conducted  
13 pursuant to Paragraph 18; and

14 g. Based on Force Main condition assessments, identifies pipe segments that  
15 leak or are cracked, broken, or ruptured (or have the potential to leak, crack, break, or rupture  
16 within the next ten (10) years), or are experiencing (or have the potential to experience) a  
17 significant reduction in capacity or other conditions that could lead to Force Main failure. GWA  
18 shall identify Force Main capacity issues and other performance issues that result in an actual or  
19 potential significant reduction in capacity.  
20  
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23

24 **Table A: Force Mains for Condition Assessment**

Force Main Lift Station	Basin	Diameter (inches)	Length (feet)	Material	Installation Year	LOF Score (1 to 5)	COF Score (1 to 5)
Hagåtña Main	Hagåtña	24	2,724	Reinforced concrete	1965	Known poor condition	4.9
Asan	Hagåtña	12	2,993	Cast iron	1971	Known poor	2.8

						condition		
1	Bayside	Hagåtña	6	646	ACP	1966	5	3.6
2	Pago Double Shaft	Hagåtña	8	2,474	ACP	1973	4.9	3.2
3	Mamajanao	Hagåtña	14	1,186	Unknown	1971	3.2	4.4
4	Barrigada	Hagåtña	14	6,078	ACP	1978	3.9	3.1
5	Mangilao	Hagåtña	10	2,739	ACP	1974	4.5	2.8
6	Piti	Hagåtña	9.1	4,336	ACP	1971	4.5	2.6
7	Tai Mangilao	Hagåtña	8	1,618	ACP	Unknown	3.4	2.7
8	Pump Station No. 17	Umatac-Merizo	6	2,840	Ductile iron	1980	3.9	2.3
9	Paseo De Oro	Hagåtña	6	686	ACP	1967	5	1.8
10	Dairy Road	Hagåtña	6	3,616	Ductile iron	1983	3.1	2.5
11	Pump Station No. 16	Umatac-Merizo	6	1,095	Ductile Iron	1980	3.1	2.5
12	Maite	Hagåtña	4	393	Unknown	1971	3.2	1.7
13	Harmon	Hagåtña	6	2,260	Unknown	1972	3.2	1.5
14	Fujita	Tumon	18	7,154	Ductile iron	1992	3	3.7
15	Route 16	Northern District	30	5,741	Unknown	1989	2.1	5
16	Yigo	Northern District	16	3,077	Polyethylene	1973	2.8	3.5
17	Chaligan	Agat-Santa Rita	16	6,352	Ductile iron	1995	2.6	3.1
18	Ypao	Hagåtña	7.3	1,741	PVC	Unknown	1.7	3.9
19	Inarajan Main	Inarajan	8	3,893	Unknown	1984	2.7	2.9
20	Southern Link	Northern District	36	4,311	Ductile iron	1992	2.6	2.9
21	New Chaot	Hagåtña	20	2,319	PVC	1989	1.7	2.9
22	Gaan	Agat-Santa Rita	16	10,125	PVC	1995	1.7	2.9
23	Alupang Cove	Hagåtña	6	905	PVC	1991	1.7	2.8
24								
25								
26								
27								
28								

1           20.    Force Main Action Plan. Within six (6) months of EPA approval of the Force  
2 Main Assessment Report, as an interim milestone, GWA shall submit to EPA, for review and  
3 approval, a Force Main Action Plan consistent with the Force Main Condition Assessment that:

- 4                   a.       Prioritizes necessary Force Main upgrades;
- 5                   b.       Includes a schedule for design and implementation of interim Force Main  
6 improvement projects where asset failure is likely to occur before Repair, Rehabilitation, or  
7 Replacement is complete;
- 8                   c.       Includes a schedule for design and implementation of Repair,  
9 Rehabilitation, Replacement, and improvement projects employing methodologies appropriate to  
10 the condition and location of the Force Main;
- 11                   d.       Requires the installation of corrosion protective measures for metallic  
12 (cast iron, ductile iron, steel, etc.) and concrete Force Mains, fittings, and appurtenances that lack  
13 adequate corrosion protection or could be subject to corrosion; and includes a schedule for future  
14 Force Main condition assessments with an explanation of GWA's Force Main prioritization and  
15 scheduling decisions.

16           21.    Implementation of the Force Main Action Plan. As a compliance milestone,  
17 GWA shall complete construction addressing at least 25% of the linear feet of Force Mains  
18 addressed in the approved Force Main Action Plan within nine (9) years of the Effective Date.  
19 GWA will be allowed to include Force Main projects completed after the Effective Date for  
20 Force Mains listed in Table A. The Force Main Action Plan shall be consistent with the Force  
21 Main Condition Assessment in that it will prioritize work at Force Mains that are failing or are  
22 most likely to fail.

23           22.    Force Main Spill Contingency Plan. Within six (6) months of the Effective Date,  
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1 as an interim milestone, GWA shall submit to EPA, for review and approval a Force Main Spill  
2 Contingency Plan for all Force Mains that establishes measures and procedures to respond to a  
3 Force Main spill event in order to minimize discharges to surface waters, prevent public  
4 exposure to the spilled wastewater, and return the Force Main to full service as rapidly as  
5 possible. The Force Main Spill Contingency Plan shall include the following sections:

6  
7 a. Force Main Information. The Force Main information section shall  
8 contain salient information about the Force Mains including location, diameter, length, material,  
9 elevations, design flows and pressures, fittings, parallel force mains, location of waterways, and  
10 a vicinity map of the Force Main, including nearby Gravity Mains and Pump Stations that may  
11 be used for diversion of flows in the event the Force Main is damaged.

12  
13 b. Spill Response Procedures. The spill response procedures section shall  
14 include a list of the actions that GWA anticipates taking in the event of a Force Main spill,  
15 including tankering and diversion of flows within the system. This section shall describe the  
16 resources GWA will have available to deploy in the event of a Force Main spill, the staff  
17 notification procedures, and anticipated response times, with the goal being to restore service to  
18 the customer as soon as possible.

19  
20 c. Equipment, Parts, and Supplies. The equipment, parts, and supplies  
21 section shall include a list of the equipment, parts, and supplies needed to implement the Plan,  
22 including response and repair equipment, spare parts, and supplies that can be used in the event  
23 of a Force Main failure. The response equipment shall include portable pumps, hose or piping,  
24 sand bags (or equivalent barrier/diversion devices), and pipe plugs. The supplies shall include  
25 replacement pipe, valves, and repair kits. The list shall identify the location of all such  
26 equipment, parts, and supplies.  
27  
28

1           23.    Force Main Operation and Maintenance Program. Within two (2) years of the  
2 Effective Date, as an interim milestone, GWA shall submit to EPA, for review and approval a  
3 Force Main Operations and Maintenance (“O&M”) Program that establishes written preventive  
4 operations and maintenance schedules and procedures for all Force Mains. The Force Main  
5 O&M Program shall be integrated into the GWA Asset Management Program, and  
6 Computerized Maintenance Management System (CMMS) and shall include:  
7

8           a.       Preventative maintenance schedules for the inspection, periodic service,  
9 and calibration of force main instrumentation, such as flow meters, liquid level sensors, alarm  
10 systems, elapsed time meters, remote monitoring equipment, and air release valves;

11           b.       Inspection and maintenance of sulfide and corrosion protection systems;  
12 and  
13

14           c.       An annual systematic method of reviewing Force Main operational data,  
15 which at a minimum includes pump run times, discharge pump rates and pump speed, pump  
16 suction and discharge pressures, flow rates, and performance indicators (including excessive  
17 noise, vibrations, and leakage), all of which can reveal reduced Force Main performance issues.  
18

19           24.    Pump Stations: Scope of Work. GWA shall complete all improvement work,  
20 which may include Repair, Rehabilitation, Replacement, and relocation, for each of its Pump  
21 Stations necessary to ensure reliability, functionality, and adequate capacity and satisfy each of  
22 the acceptance criteria set forth in Paragraph 31.

23           25.    Pump Station priority projects. Within the number of years from the Effective  
24 Date specified after each pump station below, as compliance milestones, GWA shall complete all  
25 necessary improvements to the three Pump Stations in the most critical need of work: the Ypao  
26 (three (3) years), Hagåtña Main (two (2) years), and Mamajanao (three (3) years) Pump Stations  
27  
28

1 (the "Pump Station Priority Projects"). All work, including any start-up activities and any  
 2 related O&M training for field personnel, shall be completed by these deadlines.

3 26. Sewage Pump Stations: Tiers. Except for the Pump Station Priority Projects  
 4 identified in Paragraph 25, GWA's entire inventory of Pump Stations has been organized into  
 5 four tiers: Tiers 1, 2, 3 and 4 set forth in Table B below.

7 **Table B: Pump Station Tiers<sup>1</sup>**

Tier 1	Tier 2	Tier 3	Tier 4
10 1. Alupang Cove (C) 11 2. Astumbo #1 (N) 12 3. Astumbo #2 (N) 13 4. Bayside (N) 14 5. Dairy Road (C) 15 6. Ejector Station No. 2 (S) 16 7. Fujita (N) 17 8. Harmon (N) 18 9. Inarajan Main (S) 19 10. Inarajan Lift Station (S) 20 11. Machanao (N) 21 12. Mongmong Toto (C) 13. Pago Double Shaft (C) 14. Piti (C) 15. Pump Station No. 13 (S) 16. Pump Station No. 16 (S) 17. Pump Station No. 17 (S) 18. Pump Station No. 19 (S) 19. Pump Station No. 20 (S) 20. Route 16 (N) 21. Southern Link (N) (22) Talafofo (S) (23) Yigo (N)	1. Asan (C) 2. Barrigada (C) 3. Commercial Port (C) 4. Ejector Station No. 3 (S) 5. Ejector Station No. 6 (S) 6. Latte Heights Double Trouble (N) 7. Latte Heights Submarine (N) 8. Latte Plantation (N) 9. Latte Sun Rise (N) 10. Maite (C) 11. Mangilao (C) 12. Namo Yona (C) 13. New Chaot (C) 14. Pagachao (S) 15. Paseo De Oro (N) 16. Pump Station No. 11 (S) 17. Reyes (S) 18. Tai Mangilao (C) 19. Toto Garden (C)	1. Agat Chaligan Taleyfac (Chaligan) (S) 2. Cabras Island (C) 3. Casamiro (C) 4. Chalan Pago Pump Station 3 (C) 5. Chalan Pago Pump Station 5 6. Dero Road (C) 7. Ejector Station No. 4 (S) 8. Ejector Station No. 5 (S) 9. Ejector Station No. 7 (S) 10. Leyang (C) 11. Main Trunk Line (S) 12. Ordot (C) 13. Pacific Latte (N) 14. PGD (N) 15. Pump Station No. 12 (S) 16. Pump Station No. 14 (S) 17. Pump Station No. 15 (S) 18. Pump Station No. 18 (S) 19. Sinajana (C) 20. Zero Down PS (N)	All Pump Stations not included as Pump Station priority projects or Tiers 1, 2, and 3.

23 27. Sewage Pump Stations: Preliminary Work Plans. For each tier and beginning  
 24 with Tier 1, as an interim milestone, GWA shall develop and submit to EPA for review and  
 25

27  
 28 <sup>1</sup> The district for each Pump Station is noted in parentheses: Northern (N), Central (C), and Southern (S).

1 approval a preliminary design schedule that prioritizes Pump Station improvements based on  
2 current known conditions of each Pump Station within that tier ("Pump Station Preliminary  
3 Work Plans"). GWA shall submit the Pump Station Preliminary Work Plans in accordance with  
4 the following schedule:

- 5 a. Tier 1 Pump Station Preliminary Work Plan within one year of the  
6 Effective Date;
- 7 b. Tier 2 Pump Station Preliminary Work Plan within five (5) years of the  
8 Effective Date;
- 9 c. Tier 3 and Tier 4 Pump Station Preliminary Work Plan within ten (10)  
10 years of the Effective Date.  
11

12 28. GWA shall include in each Pump Station Preliminary Work Plan:

- 13 a. an estimated scope of work for each Pump Station based on the known  
14 condition and a corresponding conceptual design in accordance with the acceptance criteria set  
15 forth in Paragraph 31;
- 16 b. a schedule for a Pump Station condition assessment performed in  
17 accordance with Paragraph 29; and
- 18 c. a proposed schedule of key implementation dates for each Pump Station  
19 within the tier, to include, at a minimum, execute design contract, complete condition  
20 assessment, issue a notice to proceed with design, execute construction contract, issue a notice to  
21 proceed with construction, complete construction, all in accordance with Paragraph 30.
- 22 d. GWA may propose, based on worsening conditions at any Pump Station  
23 from those that existed as of the Effective Date of this Consent Decree or for which land  
24 acquisition is required, a change in Tier designation or substitution of Pump Station between  
25  
26  
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1 Tiers, for EPA review and approval with the Preliminary Work Plan provided that (i) if GWA  
2 proposes a tier change, GWA may only propose changing a Pump Station from a higher priority  
3 tier to a lower priority tier by one tier (e.g., GWA may not propose changing a Pump Station  
4 from Tier 1 to Tier 3); and (ii) if GWA's Pump Station change proposal is based on GWA's  
5 acquisition of land, GWA must include in its request to EPA a commitment to resolve the land  
6 acquisition issue within a specific time period.  
7

8 29. Sewage Pump Stations: Condition Assessments. GWA shall assess the condition  
9 of each Pump Station through observation, direct inspection, investigation, and monitoring.  
10 GWA shall use the data and information from the condition assessment to identify structural and  
11 operational issues, evaluate the overall performance of the system, update its Pump Station asset  
12 condition profiles, and assess the rate of deterioration of Pump Station assets. As interim  
13 milestones, GWA shall complete and submit Pump Station condition assessments to EPA for  
14 review and comment, in accordance with the schedules established within each Pump Station  
15 Preliminary Work Plan tier. GWA shall ensure that each condition assessment is conducted,  
16 stamped, and certified by a Professional Engineer, and include the following:  
17

- 18
- 19 a. Review of existing condition assessment information and prior studies;
  - 20 b. Review of existing operations plans, operational data, and asset  
21 management data;
  - 22 c. Interviews with operations, maintenance, and engineering staff;
  - 23 d. Review of available engineering drawings;
  - 24 e. Pump Station inspections that include structural, mechanical, electrical,  
25 and civil assessments, and utilize up-to-date industry standard technologies, tools, and practices;  
26  
27 and  
28

1 f. For each pump: designed horsepower, power demands, designed flows,  
2 installation date, and Preferred Operating Region;

3 g. For each Pump Station: average flows, overall power demand, and overall  
4 wet well capacity.

5  
6 For any associated Pump Station, the Force Main Condition Assessment completed under  
7 Paragraph 18 can be utilized as part of the Pump Station condition assessment to the extent that  
8 the information therein remains accurate and valid.

9  
10 30. Completion of Tier 1 and 2 Projects. Based on the Pump Station condition  
11 assessments, GWA shall complete all improvement work set forth in the Pump Station  
12 Preliminary Work Plan for Tier 1 and 50% of the improvement work set forth in the Pump  
13 Station Preliminary Work Plan for Tier 2, each as a compliance milestone, including any start-up  
14 activities and any related O&M training for field personnel, in accordance with the following  
15 schedule:

- 16  
17 a. Tier 1 Projects within seven (7) years of the Effective Date; and  
18 b. 50% completion of Tier 2 Projects within ten (10) years of the Effective  
19 Date.

20 31. Sewage Pump Station Acceptance Criteria. For GWA to designate Pump Station  
21 projects complete under Paragraph 30, the Pump Station project must satisfy each criterion listed  
22 in this Paragraph and be designed and constructed to conform with good engineering practice  
23 and the Ten States Standards, including practices to improve climate change resiliency of the  
24 Pump Stations. As applicable, resilience considerations should be consistent with EPA's  
25 Creating Resilient Water Utilities initiative, such as the Resilient Strategies Guide for Water  
26 Utilities. When GWA determines that a Pump Station project has satisfied all of the acceptance  
27 criteria and standards in this Paragraph, GWA shall certify in a semi-annual report submitted  
28

1 pursuant to Paragraph 48 that the Pump Station project is complete according to Paragraph 30:

2 a. Emergency Operations. GWA shall install, and operate as necessary, at all  
3 Pump Stations a continuous standby power supply in the form of a fuel-operated standby  
4 generator system. GWA shall design this standby generator system as part of all Pump Stations  
5 to supply the same amount of electrical power to the Pump Station (including all pumps,  
6 controls, alarms, and support systems) as supplied by the utility company. Such emergency  
7 operation systems shall comply with the Ten States Standards, including Chapter 47.  
8

9 b. Screening baskets, comminutors, or grit removal devices. GWA shall  
10 install and operate screening baskets, comminutors, or grit removal devices to remove and/or  
11 comminute grit and large solids contained in the wastewater before it is pumped.  
12

13 c. Proper site security and safety measures. GWA shall take all reasonable  
14 measures to maintain safe Pump Station sites, ensure that site perimeter fencing is intact, and  
15 prevent site access for trespassers, especially access to confined spaces.  
16

17 d. Emergency action sheets. GWA shall update and post emergency action  
18 sheets at each Pump Station that provide a set of standard operating procedures outlining the  
19 steps an operator would take under a given scenario. GWA shall establish emergency action  
20 sheets for the following Pump Station scenarios: power failure; backup power failure; emergency  
21 response to an SSO; high-level alarm; and pre- and post-storm response. Each emergency action  
22 sheet shall contain standard operating procedures that include: response time, response  
23 personnel, chain of notification, response equipment, response procedures with order of  
24 operations, safety precautions, and close-out procedures.  
25

26 e. Backflow prevention devices. GWA shall install backflow prevention  
27 devices to protect potable water sources from cross-contamination from wastewater backflow.  
28

1 f. Alarms and SCADA systems. GWA shall install and maintain alarms,  
2 controls, and supervisory control and data acquisition (SCADA) systems and integrate all alarms  
3 and controls to the SCADA system to provide remote status monitoring of its pumping  
4 operations from an off-site location, and to the extent practicable, remote control of its pumping  
5 operations from an off-site location. GWA shall ensure that the SCADA system continuously  
6 monitors, reports, and transmits the following information:  
7

- 8 i. Daily operating hours for each sewage pump;
- 9 ii. Number of pump starts for each sewage pump;
- 10 iii. Wet well level with high- and low-level alarm set points;
- 11 iv. Flow (instantaneous and average);
- 12 v. Discharge pressure with high- and low-level alarm set points; and
- 13 vi. Minimum digital inputs, including high-water level alarm in wet  
14 well, drywell flooding, intrusion alarm, Alternating Current Pump Station power failure, Direct  
15 Current low battery, and remote signal failure alarm.  
16

17  
18 g. Adequate pumping capacity and redundancy. GWA shall ensure that there  
19 is pump redundancy at each Pump Station. The minimum number of pumps per station shall be  
20 two. GWA shall ensure pumping capacity and redundancy complies with the Ten States  
21 Standards, Chapter 42.31. *nws*

22 h. Adequate wet-well capacity. GWA shall ensure that newly-constructed,  
23 Replacement, or Rehabilitated Pump Station wet-well volume is sufficient for anticipated wet-  
24 weather peak hourly flow conditions and coordinated with pump sizing for the station. GWA  
25 shall ensure each newly-constructed, Replacement, or Rehabilitated Pump Station wet-well  
26 complies with the Ten States Standards, Chapter 42.6.  
27  
28

1 i. Corrosion protection. GWA shall Replace all Pump Station equipment,  
2 including wet-well and valve equipment, rendered inoperable from corrosion, and provide Pump  
3 Station equipment with adequate corrosion protection. GWA shall ensure corrosion protection  
4 complies with the Ten States Standards, Chapter 42.25.

5 j. Adequate electrical panels, lighting, and Power Supply. GWA shall  
6 ensure that each Pump Station has adequate electrical panels, lighting, and Power Supply.  
7

8 k. Force Mains. GWA shall ensure Force Mains leaving the Pump Station  
9 are in proper working condition and comply with the Ten States Standards, Chapter 49. For any  
10 associated Pump Station, work completed pursuant to the Force Main Action Plan can be utilized  
11 as part of the Pump Station Rehabilitation process to the extent that the information therein  
12 remains accurate and valid.  
13

14 l. Pumps. GWA shall ensure each pump is installed and operates within the  
15 Preferred Operating Region under normal operating conditions and normal daily flow conditions.  
16 GWA shall consider whether each Rehabilitated pump needs a variable frequency drive based on  
17 a cost-benefit analysis. GWA shall ensure each type of pump within its system has a complete  
18 repair kit and the necessary spare parts to resume pump service. GWA shall ensure each pump  
19 complies with the Ten States Standards, Chapter 42.3.  
20

21 m. Valves. GWA shall ensure all Pump Station valves are installed and in  
22 good working condition. Each wastewater pump shall have isolation valves to permit the  
23 removal or maintenance of the pumps and check valves without affecting the operation of  
24 remaining pumps. Each Pump Station shall have sufficient valves to permit the proper operation  
25 and maintenance of the Pump Station during normal, peak, and bypass conditions. Each valve  
26 shall be rated for use with raw, unscreened wastewater, and shall be designed for its function and  
27  
28

1 installation location, as well as the normal and maximum operating pressures expected at the  
2 Pump Station. GWA shall ensure valves comply with the Ten States Standards, Chapter 42.5.

3 n. Computerized Maintenance Management System ("CMMS"). GWA shall  
4 enter all equipment assets, spare parts, preventative maintenance procedures, and a recurring  
5 maintenance schedule for all Pump Station assets into GWA's CMMS in accordance with  
6 GWA's asset management program. The manufacturer's documented operation and  
7 maintenance procedure shall be incorporated into the specific preventative maintenance for each  
8 asset.  
9

10 o. Operational testing and performance period. GWA shall ensure  
11 that each Pump Station completes the operational testing and performance period successfully.  
12

13 p. Operational Testing. For operational testing, GWA shall operate  
14 and monitor the Pump Station for five (5) consecutive Days. During operational testing, GWA  
15 shall demonstrate Pump Station operation on automatic control without equipment or control  
16 failure and with sewage tie-in. The Pump Station mechanical equipment, electrical/control  
17 systems, and emergency power equipment shall operate without failure during the operational  
18 testing.  
19

20 q. Performance Period. For a Pump Station to be considered  
21 operational and successfully complete the performance period, all Pump Station equipment and  
22 operational systems, including all control, alarm, and SCADA systems, shall operate without  
23 failure for six (6) months and shall not result in any SSOs caused by a Pump Station failure  
24 within that time period.  
25

26 B. HAGÁTÑA WWTP

27 32. Hagátña WWTP Secondary Treatment Feasibility Study. Within seven (7) years  
28 of the Effective Date, as a compliance milestone, GWA shall submit to EPA for review and

1 approval a feasibility study for secondary treatment upgrades to the Hagåtña WWTP that will  
 2 include analyses of design options, alternative locations, climate change and sea level rise, and  
 3 planning level construction cost estimates and construction timelines. The feasibility study must  
 4 conform with good engineering practice and the Ten States Standards, including practices to  
 5 improve climate change resiliency of the secondary treatment upgrades to the Hagåtña WWTP.  
 6 As applicable, resilience considerations should be consistent with EPA's Creating Resilient  
 7 Water Utilities initiative, such as the Resilient Strategies Guide for Water Utilities.

9 33. Hagåtña WWTP Interim Effluent Limits and Monitoring Requirements. Until  
 10 GWA achieves and demonstrates compliance with secondary treatment standards of the Clean  
 11 Water Act, as defined by 40 C.F.R. Part 133, and any effluent limitations for TSS and BOD set  
 12 forth in GWA's applicable NPDES Permit for the Hagåtña WWTP, GWA shall achieve  
 13 compliance with interim effluent limits and monitoring requirements for wastewater discharges  
 14 from the Hagåtña WWTP set forth below in Table C. This Consent Decree shall not affect the  
 15 force or effect of any other effluent limitations, or monitoring and reporting requirements, or any  
 16 other terms and conditions of the applicable NPDES Permit(s).

19 **Table C: Hagåtña WWTP Interim Effluent Limits**

Interim Discharge Limitations					Monitoring Requirements	
Discharge Parameter	Average Monthly	Average Weekly	Maximum Daily	Units	Frequency	Sample Type
Biochemical Oxygen Demand (5-day)	97	140	--	mg/L	Weekly	24-hour composite
	4,911	7,055	--	lbs/day		
	Average monthly percent removal shall not be less than 33%			%		
Total Suspended Solids	64	125	--	mg/L	Weekly	24-hour composite
	2,827	5,500	--	lbs/day		
	Average monthly percent removal shall not be less than 50%			%		

1                   **C. OPERATION & MAINTENANCE REQUIREMENTS**

2           34.     **Cleaning.** Beginning on the Effective Date, as an interim milestone, GWA shall  
3 clean 60 “unique miles” of Gravity Mains in each year, which is approximately 20 percent of  
4 GWA’s Gravity Mains. In calculating the number of “unique miles” each year, GWA shall  
5 count each individual pipe segment cleaned in that year, but shall not count an individual pipe  
6 segment multiple times even if that pipe segment was subject to repeated cleaning in that year.  
7 GWA shall clean its entire Gravity Main system every 5 years. This obligation shall terminate  
8 upon Termination of the Consent Decree.  
9

10           35.     **Hot Spot Cleaning.** As an interim milestone, GWA shall implement a Hot Spot  
11 Cleaning Program, as conditionally approved by EPA on July 11, 2019, with the focus on  
12 repeated, routine cleaning of sewer locations that have a history of blockages, FOG and grit  
13 build-up, and SSOs.  
14

15           36.     **SSO Response Plan.** GWA shall implement an SSO Response Plan as approved  
16 by EPA on September 9, 2020. The SSO Response Plan shall include, but not be limited to,  
17 standard operating procedures for timely response to SSOs, spill containment, site security, site  
18 cleanup, a standard method for the estimation of spill volumes, public notification, and reporting  
19 requirements. For any repeat SSO or SSO greater than 1,000 gallons from a Gravity Main, the  
20 SSO Response Plan shall require GWA to conduct a CCTV inspection downstream of the SSO  
21 location for purposes of determining the cause of the SSO.  
22

23           37.     **SSO and Bypass Reporting Requirements.** Within thirty (30) Days after the end  
24 of each calendar-year quarter (i.e., by January 30, April 30, July 30, and October 30) after the  
25 Effective Date, until termination of the Consent Decree, GWA shall submit to EPA and Guam  
26 EPA a summary of all SSOs and Bypasses that occurred during the quarter.  
27

28           a.       For each SSO, the reports shall provide: (a) a map showing the locations



1 of all SSOs occurring in the previous quarter in relation to the locations of drinking water wells  
2 and Pump Stations; (b) the start and end date and time of each SSO; (c) the location of each SSO  
3 including address, village, and manhole numbers; (d) the structure(s) from which each SSO  
4 emerged (e.g., manhole, broken pipe, wet well, indoor plumbing, Lateral cleanout, etc.); (e) the  
5 pipe size, length, and material; (f) the estimated volume of each SSO including gross volume,  
6 amount recovered, and amount not recovered; (g) the cause of each SSO; (h) whether each SSO  
7 entered a particular water of the United States, and if so, the name of the water body and whether  
8 it entered via storm drains or other man-made conveyances; (i) the results and analysis of any  
9 post-SSO CCTV results; and (j) the actions GWA took to control the SSO and prevent future  
10 SSOs at the same location.  
11

12  
13 b. For each Bypass, the reports shall provide: (a) the name of the treatment  
14 facility and the part(s) of the facility bypassed; (b) the start and end date and time of the Bypass;  
15 (c) a detailed explanation of the cause(s), and all available photographs, videos, and maps that  
16 would aid in explaining its cause(s); (d) if a Bypass was in response to a storm event, local rain  
17 gauge data for that event; (e) the following flows: Bypass; facility influent; and facility effluent;  
18 and a description of how they were determined, including any calculations; (f) the results of any  
19 samples taken of the Bypass or receiving water, or an explanation of why sampling was not  
20 conducted; (g) the dates that GWA provided verbal and written notifications of the Bypass to  
21 EPA and Guam EPA; and (h) the actions GWA took to control the Bypass and prevent future  
22 Bypasses.  
23

24  
25 38. Asset Management. Within six (6) months of the Effective Date, as an interim  
26 milestone, GWA shall develop and implement an Asset Management Program, including a  
27 complete and regularly updated asset registry; routine condition assessments; preventive  
28

1 maintenance schedules for all assets; and a system for maintenance tracking. GWA's Asset  
2 Management Program shall meet the standards of the "International Standard ISO 55001 - Asset  
3 management – Management systems – Requirements" (2014 edition or any subsequent revision).  
4 GWA shall integrate the data from the Asset Management Program into GWA's long- and short-  
5 term planning processes, including GWA's official capital improvement plan.  
6

7 **D. PRETREATMENT PROGRAM**

8 39. **Industrial Pretreatment Program**. As a compliance milestone, GWA shall  
9 implement and enforce an Industrial Pretreatment Program that complies with 40 C.F.R. Part  
10 403, and is approved by the Guam Legislature and by EPA.

11 a. Within nine (9) months of the Effective Date, as an interim milestone,  
12 GWA shall submit to EPA, for review and comment, a proposed Industrial Pretreatment  
13 Program. As part of the Industrial Pretreatment Program, GWA shall:  
14

15 i. Submit a revised sewer use ordinance that provides GWA with the  
16 authority to enforce the requirements of Sections 307(b) and (c) and 402(b)(8) of the Act, 33  
17 U.S.C. §§ 1317(b) and (c), 1342(b)(8), and any regulations implementing those Sections;  
18

19 ii. Identify and locate all possible Industrial Users, that might be  
20 subject to the Pretreatment Program consistent with 40 C.F.R. § 403.8(f)(6);

21 iii. Conduct a technically-based local limit evaluation as required by  
22 40 C.F.R. § 403.8(f)(4) and, if required, develop technically-based local limits as required in 40  
23 C.F.R. § 403.5. This local limit evaluation shall include the analyses necessary to determine the  
24 maximum headworks loadings for the Northern District and Hagåtña WWTPs and the maximum  
25 pollutant levels protection of the Wastewater Collection System, as well as the method of  
26 allocating allowable loadings to the Industrial Users (as defined in 40 C.F.R. § 403.3(j)), a  
27 schedule of public hearings and outreach, and the ordinance adoption procedure;  
28

1                   iv.     Implement control mechanisms (such as permits) to ensure that  
2 Industrial Users comply with applicable Pretreatment Standards and requirements consistent with  
3 40 C.F.R. § 403.8(f);

4                   v.     Develop and implement an enforcement response plan that  
5 contains detailed procedures indicating how GWA will investigate and respond to instances of  
6 Industrial User noncompliance in accordance with 40 C.F.R. § 403.8(f)(5);

7                   vi.    Develop a sampling program to sample and analyze the effluent of  
8 its Industrial Users in accordance with 40 C.F.R. § 403.8(f)(2)(v);

9                   vii.   Conduct inspections and surveillance activities of Significant  
10 Industrial Users, as defined in 40 C.F.R. § 403.3(v), at least once annually in order to identify,  
11 independent of information supplied by the Industrial User, noncompliance with applicable  
12 Pretreatment Standards in accordance with 40 C.F.R. § 403.8(f)(2)(v); and

13                   viii.   Demonstrate that GWA has sufficient resources and qualified  
14 personnel to carry out the Industrial Pretreatment Program in accordance with 40 C.F.R. §  
15 403.8(f)(3).

16                   b.     Within six (6) months of receipt of EPA's comments on the proposed  
17 Industrial Pretreatment Program, GWA shall develop and submit to the Guam Legislature for  
18 approval pursuant to Guam's Administrative Adjudication Act an Industrial Pretreatment  
19 Program that complies with 40 C.F.R. Part 403 and addresses EPA's comments.

20                   c.     Within thirty (30) Days of the Guam Legislature's approval of the Part  
21 403-compliant Industrial Pretreatment Program, GWA shall submit that program to EPA for  
22 final review and approval.

23                   40.    Fats, Oils, and Grease Control Program. Within six (6) months of EPA's  
24  
25  
26  
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28

1 approval of the FOG control program manual, GWA shall develop and submit to the Guam  
2 Legislature for approval pursuant to Guam's Administrative Adjudication Act a comprehensive  
3 FOG control program to minimize the potential of SSOs caused by FOG that complies with 40  
4 C.F.R. Part 403. GWA shall, as a compliance milestone, implement and enforce the Part 403-  
5 compliant FOG control program approved by the Guam Legislature. Within 90 Days of the  
6 Effective Date, as an interim milestone, GWA shall submit to EPA, for review and approval, a  
7 FOG control program manual. The FOG control program shall meet the following requirements:  
8

9 a. A Food Service Establishment shall not discharge its wastewater into the  
10 Wastewater Collection System without a GWA permit issued in accordance with Guam  
11 Administrative Rules and Regulations ("GAR") Title 28 and the FOG control program manual;  
12

13 b. At a minimum, GWA shall conduct an annual inspection of each GRD at  
14 each FSE to verify that a properly-sized GRD has been installed, is operating, and has been  
15 maintained in compliance with GAR Title 28 and the FOG control program manual. GWA's  
16 annual inspections shall include physical inspection, including coring, of the GRD and review of  
17 both GRD maintenance and grease hauling logs;  
18

19 c. For any FSE or other GRD permittee that has failed to properly install,  
20 operate, and maintain a GRD, the FOG control program shall include an enforcement response  
21 plan; and  
22

23 d. For any FSE not served by a GRD, GWA shall require the FSE to obtain a  
24 permit and install, operate, and maintain a properly-sized GRD that meets the requirements of  
25 GAR Title 28 and the FOG control program manual.

26 **E. APPROVAL OF DELIVERABLES/PERMITS**

27 41. Approval of Deliverables. After review of any plan, report, or other item that is  
28 required to be submitted for EPA's review and approval pursuant to this Consent Decree, EPA

1 shall in writing: (a) approve the submission; (b) approve the submission upon specified  
2 conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove  
3 the submission. EPA will use its best efforts to expeditiously review and take action on  
4 deliverables that GWA submits.

5           42. If the submission is approved pursuant to Paragraph 41, GWA shall take all  
6 actions required by the plan, report, or other document, in accordance with the schedules and  
7 requirements of the plan, report, or other document, as approved. If the submission is  
8 conditionally approved or approved in part pursuant to Paragraph 41(b) or (c), GWA shall, upon  
9 written direction from EPA, take all actions required by the approved plan, report, or other item  
10 that EPA determines are technically severable from any disapproved portions, subject to GWA's  
11 right to dispute only the specified conditions or the disapproved portions, under Section IX  
12 (Dispute Resolution).  
13

14           43. If the submission is disapproved in whole or in part pursuant to Paragraph 41(c)  
15 or (d), the GWA shall, within thirty (30) Days or such other time as the Parties agree to in  
16 writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved  
17 portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission  
18 is approved in whole or in part, GWA shall proceed in accordance with the preceding Paragraph.  
19

20           44. Any stipulated penalties applicable to the original submission, as provided in  
21 Section VII (Stipulated Penalties), shall accrue during the 30-Day period or other specified  
22 period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or  
23 in part; provided that, if the original submission was so deficient as to constitute a material  
24 breach of GWA's obligations under this Decree, the stipulated penalties applicable to the original  
25 submission shall be due and payable notwithstanding any subsequent resubmission.  
26  
27  
28

1           45.    If a resubmitted plan, report, or other item, or portion thereof, is disapproved in  
2 whole or in part, EPA may again require the submitting Defendant to correct any deficiencies, in  
3 accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to  
4 Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties  
5 as provided in the preceding Paragraphs.  
6

7           46.    In the event of unforeseen contingencies, GWA may make a written request to  
8 EPA to change any schedule or deadline in any approved or conditionally approved submission.  
9 Any such request must be submitted at least sixty (60) Days prior to the applicable deadline and  
10 must include a proposed schedule or deadline, the basis for the request, and how GWA intends to  
11 meet the proposed schedule or deadline, including supporting documentation. EPA will approve,  
12 approve with conditions, or disapprove the request. If EPA approves or conditionally approves  
13 the request, the new schedule or deadline will be applicable as of the date of EPA's approval or  
14 conditional approval. Any dispute regarding EPA's decision on a request made under this  
15 Paragraph shall be subject to Dispute Resolution pursuant to Section IX (Dispute Resolution).  
16 Changes to milestones, schedules, or deadlines set forth in this Consent Decree may only be  
17 made through a modification pursuant to Section XVI (Modification).  
18  
19

20           47.    Permits. Where any obligation under this Section requires GWA to obtain a  
21 federal, State, or local permit or approval, GWA shall submit timely and complete applications  
22 and take all other actions necessary to obtain all such permits or approvals. GWA may seek  
23 relief under the provisions of Section VIII (Force Majeure) for any delay in the performance of  
24 any such obligation resulting from a failure to obtain, or a delay in obtaining, any permit or  
25 approval required to fulfill such obligation, if GWA has submitted timely and complete  
26 applications and has taken all other actions necessary to obtain all such permits or approvals.  
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## VI. REPORTING REQUIREMENTS

48. Semi-annual Report. By January 31<sup>st</sup> and July 31<sup>st</sup> of each year after the Effective Date of this Consent Decree, until termination of this Decree pursuant to Section XVII, GWA shall submit to EPA by email a complete and accurate semi-annual report for the preceding six months that shall address: the status of any construction activities; the status of all injunctive relief compliance requirements set forth in Section V, including Paragraph references and completion dates; completion of milestones; problems encountered or anticipated, together with implemented or proposed solutions; a list of all required permits and the status of those permit applications; operation and maintenance updates; and reports to Guam EPA. More specifically, each of the semi-annual reports shall include:

a. A discussion of the completion of milestones in the Pump Station work plans in the form of a list that identifies by Pump Station name and project, satisfaction of the acceptance criteria in Paragraph 31, and the completion date for all Pump Station improvements scheduled in the applicable Pump Station Preliminary Work Plans.

b. A statement of the number of miles of Gravity Mains that GWA has Rehabilitated and Replaced in the previous six months, in accordance with Paragraph 12.b. For each Gravity Main Rehabilitated or Replaced, GWA shall provide the following information: (1) the pipe identification number; (2) whether the pipe was Rehabilitated or Replaced; (3) the length of the Gravity Main claimed as credit towards the mileage requirements and the length of Rehabilitation or Replacement performed; (4) the pipe material; (5) the diameter of the pipe; (6) the original installation date of the Gravity Main at issue; (7) the most recent condition assessment of the Gravity Main prior to its Rehabilitation or Replacement; (8) a map depicting the location of each Gravity Main Rehabilitated or Replaced; (9) the average annual rate of Gravity Main Rehabilitation based on a two (2) year rolling average, the number of feet of

1 Gravity Mains Rehabilitated, and the cumulative total feet of Gravity Main Rehabilitated since  
2 the Effective Date; (10) the number of manholes associated with Rehabilitated Gravity Mains  
3 and the number of manholes Rehabilitated; (11) the number of Laterals reconnected in  
4 association with Gravity Main Rehabilitation and Replacement; (12) if GWA did not achieve its  
5 Rehabilitation requirement in Paragraph 12.b, an explanation of why it did not achieve the  
6 Rehabilitation requirement and a description of what changes to the work will be made in order  
7 to correct the deficiency and achieve the Rehabilitation requirement in GWA's subsequent fiscal  
8 years; (13) the Rehabilitation budget and dollars spent on Gravity Main Rehabilitation; (14) the  
9 Gravity Main Rehabilitation projects targeted to be completed in GWA's next fiscal year; and  
10 (15) an explanation of any revisions that were made to GWA's financial planning associated  
11 with future Gravity Main Rehabilitation and Replacement projects.  
12

13  
14 c. A list of all deliverables submitted to EPA and a description of the work  
15 performed pursuant to all deliverables submitted to the United States and approved or  
16 commented on by EPA, as well as a list of deliverables submitted to the United States but not yet  
17 approved or commented on by EPA.  
18

19 d. The feet of Gravity Mains cleaned and percent of feet of Gravity Mains in  
20 the Wastewater Collection System cleaned as part of the routine and hot spot cleaning programs  
21 set forth in Paragraphs 34 and 35, reporting both unique footage and total footage (i.e., including  
22 repeat cleanings) and the feet of Gravity Mains in the hot spot cleaning program and the range of  
23 cleaning frequencies.  
24

25 e. A description of the activities to Repair, Rehabilitate, or Replace Acute  
26 Defects pursuant to Paragraph 12.a, including the number of Acute Defects found; the number of  
27 Acute Defects Repaired, Rehabilitated, and Replaced; and for Acute Defects that were not  
28



1 Repaired, Rehabilitated, or Replaced within 18 or 24 months from identification, as applicable,  
2 an explanation of why they were not Repaired, Rehabilitated, or Replaced and description of the  
3 actions or a schedule to Repair, Rehabilitate, or Replace the Acute Defect(s) as soon as possible.

4 f. A summary of the systematic review, pursuant to Paragraph 23.c, of Force  
5 Main operating data, which at a minimum includes pump run times, discharge pump rates and  
6 pump speed, pump suction and discharge pressures, flow rates, and performance indicators  
7 (including excessive noise, vibrations, and leakage), all of which may have revealed Force Main  
8 performance issues.  
9

10 g. A description of any non-compliance with the requirements of this  
11 Consent Decree that occurred during the reporting period and an explanation of the violation's  
12 likely cause and of the remedial steps taken, or to be taken, to prevent or minimize such  
13 violation. If GWA violates, or has reason to believe that it may violate, any requirement of this  
14 Consent Decree, GWA shall notify the United States of such violation and its likely duration, in  
15 writing, within ten (10) business days of the Day GWA first becomes aware of the violation,  
16 with an explanation of the violation's likely cause and of the remedial steps taken, or to be taken,  
17 to prevent or minimize such violation. If any event occurs, or may occur, that might delay the  
18 performance of any obligation under this Consent Decree, GWA shall provide notice orally or by  
19 electronic transmission to EPA and the United States, within 72 hours or two (2) business days  
20 of when GWA first knew that such event might cause a delay, whichever period of time is  
21 longer. Within seven (7) Days thereafter, GWA shall provide in writing to EPA an explanation  
22 and description of the reasons for the delay; the anticipated duration of the delay; all actions  
23 taken or to be taken to prevent, minimize or mitigate the delay or the effect thereof, and a  
24 schedule for implementation of any such measures; and a statement as to whether, in the opinion  
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28

1 of GWA, such event may cause or contribute to an endangerment to public health, welfare or the  
2 environment.

3 h. Whenever any violation of this Consent Decree or any of the applicable  
4 NPDES Permits or any other event affecting GWA's performance under this Consent Decree, or  
5 the performance of its POTW, may pose an immediate threat to the public health or welfare or  
6 the environment, GWA shall notify EPA orally and by e-mail as soon as possible, but no later  
7 than 24 hours after GWA first knew of the violation or event. If the cause of a violation or event  
8 cannot be fully explained at the time the report is due, GWA shall so state in the report. GWA  
9 shall investigate the cause of the violation or event and shall then submit an amendment to the  
10 report, including a full explanation of the cause of the violation or event, within thirty (30) Days  
11 of the Day GWA becomes aware of the cause of the violation or event. Nothing in this  
12 Paragraph relieves GWA of its obligation to provide the notice required by Section VIII (Force  
13 Majeure).  
14  
15

16 49. Annual Meeting. At a mutually agreeable date in March of each year after the  
17 Effective Date, the Parties shall meet, either in person or via teleconference, to review GWA's  
18 compliance with the requirements of the Consent Decree and to discuss the status of the work  
19 being performed by GWA pursuant to the Decree and interim milestones and compliance  
20 milestones set forth in the Decree. Two weeks before the scheduled annual meeting, GWA shall  
21 provide EPA a proposed agenda addressing issues to be discussed.  
22

23  
24 50. Each report submitted by GWA under this Section shall be signed by an official  
25 of GWA and include the following certification:

26 I certify under penalty of law that this document and all  
27 attachments were prepared under my direction or supervision in  
28 accordance with a system designed to assure that qualified  
personnel properly gather and evaluate the information submitted.

1 Based on my inquiry of the person or persons who manage the  
2 system, or those persons directly responsible for gathering the  
3 information, the information submitted is, to the best of my  
4 knowledge and belief, true, accurate, and complete. I have no  
5 personal knowledge that the information submitted is other than  
6 true, accurate, and complete. I am aware that there are significant  
7 penalties for submitting false information, including the possibility  
8 of fine and imprisonment for knowing violations.

9 This certification requirement does not apply to emergency or similar notifications where  
10 compliance would be impractical.

11 51. The reporting requirements of this Consent Decree do not relieve GWA of any  
12 reporting obligations required by the Act or implementing regulations, or by any other federal,  
13 State, or local law, regulation, permit, or other requirement.

14 52. Any information provided pursuant to this Consent Decree may be used by the  
15 United States in any proceeding to enforce the provisions of this Consent Decree and as  
16 otherwise permitted by law.

## 17 VII. STIPULATED PENALTIES

18 53. GWA shall be liable for stipulated penalties to the United States for violations of  
19 this Consent Decree as specified below, unless excused under Section VIII (Force Majeure). A  
20 violation includes failing to perform any obligation required by the terms of this Decree,  
21 including any work plan or schedule approved under this Decree, according to all applicable  
22 requirements of this Decree and within the specified time schedules established by or approved  
23 under this Decree.

24 54. Interim Effluent Limits. The following stipulated penalties shall accrue per  
25 violation for each violation of an interim effluent limit or monitoring requirement established  
26 pursuant to Paragraph 33 (a violation of a weekly or monthly average limit, or a monitoring  
27 requirement, shall be considered a single violation):  
28

<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
\$500.....	Daily Maximum Limit or Monitoring Requirement
\$1,000.....	Weekly Average Limit
\$1,500.....	Monthly Average Limit

55. Gravity Main Rehabilitation or Replacement. GWA's failure to meet a target to Rehabilitate or Replace Gravity Mains pursuant to Paragraph 12.b shall result in a stipulated penalty as follows:

<u>Feet Not Completed</u>	<u>Penalty Per Foot</u>
Up to and including 5000 feet	\$6
Over 5000 feet	\$12

56. For failure to clean the required minimum miles of Gravity Mains in any year as set forth in Paragraph 35, GWA shall be liable for a stipulated penalty of \$3,500 per mile below the annual performance requirement.

57. SSOs.

a. For each SSO that reaches waters of the United States, GWA shall pay a stipulated penalty in the amount of \$750 for SSOs under 1,000 gallons, \$1,000 for SSOs between 1,000 and 10,000 gallons, \$4,000 for SSOs between 10,000 and 100,000 gallons, and \$10,000 for SSOs over 100,000 gallons. For each SSO that does not reach waters of the United States, GWA shall pay a stipulated penalty in the amount of \$200 for SSOs under 1,000 gallons, \$750 for SSOs between 1,000 and 10,000 gallons, \$3,000 for SSOs between 10,000 and 100,000 gallons, and \$8,000 for SSOs over 100,000 gallons. Notwithstanding the foregoing, GWA shall not be liable for stipulated penalties under this Paragraph if GWA demonstrates that an SSO was caused by vandalism or a contractor not working for GWA; and GWA demonstrates that it has used all reasonable measures to prevent said SSO and properly respond, including limiting public contact.

1           b. For failure to respond to an SSO in accordance with the SSO Response  
2 Plan after approval by EPA pursuant to Paragraph 37, GWA shall pay a stipulated penalty of  
3 \$1,000 per SSO.

4           58. Compliance Milestones.

5           a. The following stipulated penalties shall accrue per violation per Day for  
6 each violation of the compliance milestones identified in subparagraph b of this Paragraph.  
7

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$750.....	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$1,000 .....	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$1,500 .....	61 <sup>st</sup> Day and beyond

11           b. List of Compliance Milestones.

12           (1) Failure to Repair, Rehabilitate, or Replace Acute Defects pursuant to Paragraph 12.a.

13           (2) Failure to submit a Long-Term Gravity Main Plan pursuant to Paragraph 13.a.

14           (2) Failure to complete Capacity Assurance Projects pursuant to Paragraph 15.

15           (3) Failure to complete implementation of the Force Main Action Plan pursuant to  
16 Paragraph 21.

17           (4) Failure to complete any Pump Station Priority Project pursuant to Paragraph 25, or  
18 failure to complete any Pump Station improvement work pursuant to Paragraph 30.

19           (5) Failure to submit a feasibility study for secondary treatment upgrades to the Hagåtña  
20 WWTP pursuant to Paragraph 32.

21           (6) Failure to implement an approved Industrial Pretreatment Program pursuant to  
22 Paragraph 39.

23           (7) Failure to implement an approved FOG control program pursuant to Paragraph 40.

24           59. Interim Milestones.

1 a. The following stipulated penalties shall accrue per violation per Day for  
2 each violation of the requirements identified in subparagraph b of this Paragraph.

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1 <sup>st</sup> through 30 <sup>th</sup> Day
\$750.....	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$1,000.....	61 <sup>st</sup> Day and beyond

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4  
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7 b. List of Interim Milestones.

8 (1) Failure to complete CCTV inspections, failure to assess CCTV inspections, or failure  
9 to submit a Gravity Main Condition Assessment Report pursuant to Paragraph 11.

10 (2) Failure to submit a Gravity Main Work Plan pursuant to Paragraph 2.c. *was*

11 (3) Failure to submit a Capacity Evaluation Report pursuant to Paragraph 15.

12 (4) Failure to submit a Capacity Assurance Report pursuant to Paragraph 16.

13 (5) Failure to submit a Force Main inventory pursuant to Paragraph 17.

14 (6) Failure to complete a Force Main condition assessment pursuant to Paragraph 18.

15 (7) Failure to submit:

- 16 • a Force Main Assessment Report pursuant to Paragraph 19;
- 17 • a Force Main Action Plan pursuant to Paragraph 20;
- 18 • a Force Main Spill Contingency Plan pursuant to Paragraph 22;
- 19 • a Force Main O&M Program pursuant to Paragraph 23.

20 (8) Failure to submit Pump Station Preliminary Work Plans pursuant to Paragraph 27.

21 (9) Failure to submit Pump Station condition assessments pursuant to Paragraph 29.

22 (10) Failure to clean 60 "unique miles" of Gravity Mains annually pursuant to Paragraph

23  
24  
25  
26 34.

27 (11) Failure to implement the Hot Spot Cleaning Program pursuant to Paragraph 35.

1 (12) Failure to develop and implement the Asset Management Program pursuant to  
2 Paragraph 38.

3 (13) Failure to submit a proposed Industrial Pretreatment Program pursuant to Paragraph  
4 39.

5 (14) Failure to submit a FOG control program manual pursuant to Paragraph 4040.

6  
7 60. Reporting and Implementation Requirements. The following stipulated penalties  
8 shall accrue per violation per Day for each violation of the reporting requirements of Paragraph  
9 37 (SSO and Bypass reporting) or Section VI (Reporting Requirements), and for each failure to  
10 implement any deliverable approved or conditionally approved pursuant to Section V.E  
11 (Approval of Deliverables/Permits) that is not specifically listed in Paragraph 58.b (Compliance  
12 Milestones) or 59.b (Interim Milestones):  
13

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.....	1st through 30th Day
\$1,000.....	31st through 60th Day
\$1,250.....	61st Day and beyond

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18 61. Stipulated penalties under this Section shall begin to accrue on the Day after  
19 performance is due or on the Day a violation occurs, whichever is applicable, and shall continue  
20 to accrue until performance is satisfactorily completed or until the violation ceases. Stipulated  
21 penalties shall accrue simultaneously for separate violations of this Consent Decree.

22 62. GWA shall pay any stipulated penalty within thirty (30) Days of receiving the  
23 United States' written demand.

24  
25 63. The United States may, in the unreviewable exercise of its discretion, reduce or  
26 waive stipulated penalties otherwise due it under this Consent Decree.

27 64. Stipulated penalties shall continue to accrue as provided in Paragraph 61, during  
28

1 any Dispute Resolution, but need not be paid until the following:

2 a. If the dispute is resolved by agreement of the Parties or by a decision of  
3 EPA that is not appealed to the Court, GWA shall pay accrued penalties determined to be owing,  
4 together with interest, to the United States within thirty (30) Days of the Effective Date of the  
5 agreement or the receipt of EPA's decision or order.

6 b. If the dispute is appealed to the Court and the United States prevails in  
7 whole or in part, GWA shall pay all accrued penalties determined by the Court to be owing,  
8 together with interest, within sixty (60) Days of receiving the Court's decision or order, except as  
9 provided in subparagraph c of this Paragraph.  
10

11 c. If any Party appeals the District Court's decision, GWA shall pay all  
12 accrued penalties determined to be owing, together with interest, within fifteen (15) Days of  
13 receiving the final appellate court decision.  
14

15 65. GWA shall pay stipulated penalties owing to the United States by FedWire  
16 Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided  
17 to GWA by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the  
18 District of Guam after the Effective Date. The payment instructions provided by the FLU will  
19 include a Consolidated Debt Collection System ("CDCS") number, which GWA shall use to  
20 identify all payments required to be made in accordance with this Consent Decree. The FLU  
21 will provide the payment instructions to:  
22

23 Taling M Taitano  
24 Chief Financial Officer  
25 Guam Waterworks Authority  
26 Ste 200, Gloria B. Nelson Public Service Building  
27 688 Route 15  
28 Mangilao, Guam 96913  
(671) 300-6860  
tmtaitano@guamwaterworks.org



1 on behalf of GWA. GWA may change the individual to receive payment instructions on its  
2 behalf by providing written notice of such change to DOJ and EPA in accordance with Section  
3 XIII (Notices).

4           66. At the time of payment, GWA shall send notice that payment has been made: (i)  
5 to EPA via email at cinwd\_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati  
6 Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to DOJ via  
7 email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with  
8 Section XIII. Such notice shall state that the payment is for stipulated penalties owed pursuant to  
9 the Consent Decree in *United States v. Guam Waterworks Authority and Government of Guam*,  
10 shall state the violation(s) for which the penalties are being paid, and shall reference the civil  
11 action number, CDCS Number and DOJ case number DJ 90-5-1-1-11696.

12           67. If GWA fails to pay stipulated penalties according to the terms of this Consent  
13 Decree, GWA shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,  
14 accruing as of the date payment became due. Nothing in this Paragraph shall be construed to  
15 limit the United States from seeking any remedy otherwise provided by law for GWA's failure to  
16 pay any stipulated penalties.

17           68. The payment of penalties and interest, if any, shall not alter in any way  
18 Defendant's obligation to complete the performance of the requirements of this Consent Decree.

19           69. Non-Exclusivity of Remedy. Stipulated penalties are not the United States'  
20 exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI  
21 (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to  
22 seek any other relief it deems appropriate for GWA's violation of this Decree or applicable law,  
23 including but not limited to an action against Defendant(s) for statutory penalties, additional  
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1 injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any  
2 statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount  
3 equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

#### 4 **VIII. FORCE MAJEURE**

5 70. "Force majeure," for purposes of this Consent Decree, is defined as any event  
6 arising from causes beyond the control of GWA, of any entity controlled by GWA, or of GWA's  
7 contractors, that delays or prevents the performance of any obligation under this Consent Decree  
8 despite best efforts of GWA to fulfill the obligation. The requirement that GWA exercise "best  
9 efforts to fulfill the obligation" includes using best efforts to anticipate any reasonably  
10 foreseeable potential force majeure event and best efforts to address the effects of any potential  
11 force majeure event (a) as it is occurring and (b) following the potential force majeure, such that  
12 the delay and any adverse effects of the delay are minimized to the maximum extent practicable.  
13 "Force Majeure" does not include financial inability to perform any obligation under this  
14 Consent Decree.  
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16

17 71. If any event occurs or has occurred that falls within Section VIII (Force Majeure)  
18 of this Consent Decree that may delay the performance of any obligation under this Consent  
19 Decree, GWA shall provide notice orally or by electronic transmission to EPA and the United  
20 States, within 72 hours or two (2) business days of when GWA first knew that the alleged force  
21 majeure event might cause a delay, whichever period of time is longer. Within seven (7) Days  
22 thereafter, GWA shall provide in writing to EPA an explanation and description of the reasons  
23 for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or  
24 minimize the delay; a schedule for implementation of any measures to be taken to prevent or  
25 mitigate the delay or the effect of the delay; GWA's rationale for attributing such delay to a force  
26 majeure event; and a statement as to whether, in the opinion of GWA, such event may cause or  
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1 contribute to an endangerment to public health, welfare or the environment. EPA may, in its  
2 unreviewable discretion, extend the time for the written explanation. GWA shall include with  
3 any notice all available documentation supporting the claim that the delay was attributable to a  
4 force majeure. Failure to comply with the above requirements shall preclude GWA from  
5 asserting any claim of force majeure for that event for the period of time of such failure to  
6 comply, and for any additional delay caused by such failure. GWA shall be deemed to know of  
7 any circumstance of which GWA, any entity controlled by GWA, or GWA's contractors knew or  
8 should have known.  
9

10 72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure  
11 event, the time for performance of the obligations under this Consent Decree that are affected by  
12 the force majeure event will be extended by EPA for such time as is necessary to complete those  
13 obligations. An extension of the time for performance of the obligations affected by the force  
14 majeure event shall not, of itself, extend the time for performance of any other obligation. EPA  
15 will notify GWA in writing of the length of the extension, if any, for performance of the  
16 obligations affected by the force majeure event.  
17  
18

19 73. If EPA does not agree that the delay or anticipated delay has been or will be  
20 caused by a force majeure event, EPA will notify GWA in writing of its decision.  
21

22 74. If GWA elects to invoke the dispute resolution procedures set forth in Section IX  
23 (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice.  
24 In any such proceeding, GWA shall have the burden of demonstrating by a preponderance of the  
25 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,  
26 that the duration of the delay or the extension sought was or will be warranted under the  
27 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and  
28

1 that GWA complied with the requirements of Paragraphs 71 and 72. If GWA carries this burden,  
2 the delay at issue shall be deemed not to be a violation by GWA of the affected obligation of this  
3 Consent Decree identified to EPA and the Court.

#### 4 **IX. DISPUTE RESOLUTION**

5 75. Unless otherwise expressly provided for in this Consent Decree, the dispute  
6 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising  
7 under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute  
8 under this Section shall preclude Defendants from raising any such issue as a defense to an  
9 action by the United States to enforce any obligation of Defendants arising under this Decree.

10 76. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under  
11 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be  
12 considered to have arisen when either Defendant sends the United States a written Notice of  
13 Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal  
14 negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that  
15 period is modified by written agreement by the relevant Parties. If the relevant Parties cannot  
16 resolve a dispute by informal negotiations, then the position advanced by the United States shall  
17 be delivered in writing and considered binding unless, within thirty (30) Days after the  
18 conclusion of the informal negotiation period, the notifying Defendant invokes formal dispute  
19 resolution procedures as set forth below.

20 77. Formal Dispute Resolution. The notifying Defendant shall invoke formal dispute  
21 resolution procedures, within the time period provided in the preceding Paragraph, by serving on  
22 the United States a written Statement of Position regarding the matter in dispute. The notifying  
23 Defendant's Statement of Position shall not raise any issue not raised in its Notice of Dispute  
24 described in Paragraph 76. The Statement of Position shall include, but need not be limited to,  
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1 any factual data, analysis, or opinion supporting the Defendant's position and any supporting  
2 documentation relied upon by the Defendant.

3 78. The United States shall serve its Statement of Position within forty-five (45) Days  
4 of receipt of the notifying Defendant's Statement of Position. The United States' Statement of  
5 Position shall include, but need not be limited to, any factual data, analysis, or opinion  
6 supporting that position and any supporting documentation relied upon by the United States.  
7 The United States' Statement of Position shall be binding on the Defendant, unless the  
8 Defendant files a motion for judicial review of the dispute in accordance with the following  
9 Paragraph.  
10

11 79. The notifying Defendant may seek judicial review of the dispute by filing with the  
12 Court and serving on the United States, in accordance with Section XIII (Notices), a motion  
13 requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of  
14 receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The  
15 motion shall contain a written statement of the notifying Defendant's position on the matter in  
16 dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set  
17 forth the relief requested and any schedule within which the dispute must be resolved for orderly  
18 implementation of the Consent Decree. The motion may not raise any issue not raised in GWA's  
19 Statement of Position pursuant to Paragraph 77, unless the United States raises a new issue of  
20 law or fact in its Statement of Position.  
21  
22

23 80. The United States shall respond to the notifying Defendant's motion within the  
24 time period allowed by the Local Rules of this Court. The notifying Defendant may file a reply  
25 memorandum, to the extent permitted by the Local Rules.  
26

27 81. Standard of Review.  
28

1 a. Disputes Regarding Schedules and Deadlines in Deliverables. In any  
2 dispute for which the notifying Defendant seeks judicial review concerning the adequacy or  
3 appropriateness of a schedule or deadline in a deliverable submitted for EPA's review and  
4 approval, or for a schedule or deadline to which GWA seeks a change pursuant to Paragraph 476,  
5 the notifying Defendant shall bear the burden of demonstrating by a preponderance of the  
6 evidence that the notifying Defendant's position on the issues in dispute should prevail over the  
7 United States' position because it is more consistent with the objectives of this Consent Decree.

9 b. Other Disputes. Judicial review of all other disputes shall be governed by  
10 applicable principles of law.

11 82. The invocation of dispute resolution procedures under this Section shall not, by  
12 itself, extend, postpone, or affect in any way any obligation of the Defendant(s) under this  
13 Consent Decree, unless and until final resolution of the dispute so provides. Stipulated penalties  
14 with respect to the disputed matter shall continue to accrue from the first Day of noncompliance,  
15 but payment shall be stayed pending resolution of the dispute as provided in Paragraph 65. If the  
16 notifying Defendant does not prevail on the disputed issue, stipulated penalties shall be assessed  
17 and paid as provided in Section VII (Stipulated Penalties).  
18  
19

#### 20 X. INFORMATION COLLECTION AND RETENTION

21 83. The United States and its representatives, including attorneys, contractors, and  
22 consultants, shall have the right of entry into any facility covered by this Consent Decree, at all  
23 reasonable times, upon presentation of credentials, to:

- 24
- 25 a. monitor the progress of activities required under this Consent Decree;
  - 26 b. verify any data or information submitted to the United States in  
27 accordance with the terms of this Consent Decree;
  - 28 c. obtain samples and, upon request, splits of any samples taken by a GWA

1 or its representatives, contractors, or consultants;

2 d. obtain documentary evidence, including photographs and similar data; and

3 e. assess GWA's compliance with this Consent Decree.

4 84. Upon request, GWA shall provide EPA or its authorized representatives splits of  
5 any samples taken by GWA. Upon request, EPA shall provide GWA splits of any samples taken  
6 by EPA.

7  
8 85. Until two years after the termination of this Consent Decree, GWA shall retain,  
9 and shall instruct its contractors and agents to preserve, all non-identical copies of all documents,  
10 records, or other information (including documents, records, or other information in electronic  
11 form) in its or its contractors' or agents' possession or control, or that come into its or its  
12 contractors' or agents' possession or control, and that document GWA's performance of its  
13 obligations under this Consent Decree. This information-retention requirement shall apply  
14 regardless of any contrary corporate or institutional policies or procedures. At any time during  
15 this information-retention period, upon request by the United States, GWA shall provide copies  
16 of any documents, records, or other information required to be maintained under this Paragraph.  
17

18  
19 86. At the conclusion of the information-retention period provided in the preceding  
20 Paragraph, GWA shall notify the United States at least ninety (90) Days prior to the destruction  
21 of any documents, records, or other information subject to the requirements of the preceding  
22 Paragraph and, upon request by the United States, GWA shall deliver any such documents,  
23 records, or other information to EPA. GWA may assert that certain documents, records, or other  
24 information is privileged under the attorney-client privilege or any other privilege recognized by  
25 federal law. If GWA asserts such a privilege, it shall provide the following: (a) the title of the  
26 document, record, or information; (b) the date of the document, record, or information; (c) the  
27  
28

1 name and title of each author of the document, record, or information; (d) the name and title of  
2 each addressee and recipient; (e) a description of the subject of the document, record, or  
3 information; and (f) the privilege asserted by GWA. However, GWA may make no claim of  
4 privilege or protection regarding any data regarding GWA's POTW, including all sampling,  
5 analytical, monitoring, scientific, chemical or engineering data. The United States reserves the  
6 right to challenge any claim of privilege regarding documents, records, or other information  
7 created or generated pursuant to the requirements of this Consent Decree.  
8

9       87. GWA may also assert that information required to be provided under this Section  
10 is protected as Confidential Business Information ("CBI") under 40 C.F.R. Part 2. As to any  
11 information that GWA seeks to protect as CBI, it shall follow the procedures set forth in 40  
12 C.F.R. Part 2.  
13

14       88. This Consent Decree in no way limits or affects any right of entry and inspection,  
15 or any right to obtain information, held by the United States pursuant to applicable federal laws,  
16 regulations, or permits, nor does it limit or affect any duty or obligation of either Defendant to  
17 maintain documents, records, or other information imposed by applicable federal or State laws,  
18 regulations, or permits.  
19

#### 20           **XI. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS**

21       89. This Consent Decree resolves only the civil claims of the United States for the  
22 violations alleged in the Complaint filed in this action through the date of lodging of this Consent  
23 Decree only with respect to the injunctive relief set forth in Section V (Compliance Measures).  
24 The United States specifically reserves all rights to seek civil penalties for each of the violations  
25 alleged in the Complaint and further injunctive relief for those alleged violations, including  
26 implementation of the approved Force Main Action Plan, completion of Tier 2, 3, and 4 Pump  
27 Station Projects, Gravity Main Replacement or Rehabilitation of at least 35 additional "unique  
28



1 miles,” additional wet and dry flow monitoring for the Tumon Basin, and upgrading the Hagåtña  
2 WWTP to secondary treatment.

3 90. The United States reserves all legal and equitable remedies available to enforce  
4 the provisions of this Consent Decree. This Consent Decree shall not be construed to limit the  
5 rights of the United States to obtain penalties or injunctive relief under the Act or implementing  
6 regulations, or under other federal laws, regulations, or permit conditions, except as expressly  
7 stated in Paragraph 89. The United States further reserves all legal and equitable remedies to  
8 address any imminent and substantial endangerment to the public health or welfare or the  
9 environment arising at, or posed by, GWA’s Facility, whether related to the violations addressed  
10 in this Consent Decree or otherwise.  
11

12 91. GWA reserves all legal and equitable defenses to enforcement of the provisions of  
13 this Consent Decree, subject to the procedures set forth in Sections VIII (Force Majeure) and IX  
14 (Dispute Resolution).  
15

16 92. In any subsequent administrative or judicial proceeding initiated by the United  
17 States for injunctive relief, civil penalties, other appropriate relief relating to the Facility or a  
18 GWA’s violations, GWA shall not assert, and may not maintain, any defense or claim based  
19 upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion,  
20 claim-splitting, or other defenses based upon any contention that the claims raised by the United  
21 States in the subsequent proceeding were or should have been brought in the instant case, except  
22 with respect to claims that have been specifically resolved pursuant to Paragraph 89. Nothing in  
23 this Consent Decree shall constitute an admission of any fact or of any liability, or a waiver of  
24 any right, except as expressly stated herein.  
25  
26

27 93. This Consent Decree is not a permit, or a modification of any permit, under any  
28

1 federal, State, or local laws or regulations. The Defendants are responsible for achieving and  
2 maintaining complete compliance with all applicable federal, State, and local laws, regulations,  
3 and permits; and the Defendants' compliance with this Consent Decree shall be no defense to  
4 any action commenced by the United States pursuant to any such laws, regulations, or permits,  
5 except as set forth herein. The United States does not, by its consent to the entry of this Consent  
6 Decree, warrant or aver in any manner that Defendants' compliance with any aspect of this  
7 Consent Decree will result in compliance with provisions of the Act, 33 U.S.C. §§ 1251-1388, or  
8 with any other provisions of federal, State, or local laws, regulations, or permits.  
9

10 94. Nothing in this Consent Decree limits the rights or defenses available under CWA  
11 Section 309(e), 33 U.S.C. § 1319(e), in the event that the laws of the Territory, as currently or  
12 hereafter enacted, may prevent GWA from raising the revenues needed to comply with this  
13 Decree.  
14

15 95. This Consent Decree does not limit or affect the rights of the Defendants or of the  
16 United States against any third parties, not party to this Consent Decree, nor does it limit the  
17 rights of third parties, not party to this Consent Decree, against the Defendants, except as  
18 otherwise provided by law.  
19

20 96. This Consent Decree shall not be construed to create rights in, or grant any cause  
21 of action to, any third party not party to this Consent Decree.  
22

## 23 XII. COSTS

24 97. The Parties shall bear their own costs of this action, including attorneys' fees,  
25 except that the United States shall be entitled to collect the costs (including attorneys' fees)  
26 incurred in any action necessary to collect any stipulated penalties due but not paid by GWA.  
27

## 28 XIII. NOTICES

98. Unless otherwise specified in this Decree, whenever notifications, submissions, or

1 communications are required by this Consent Decree, they shall be made in writing and  
2 addressed as follows:

3 As to the United States by email: eescdcopy.enrd@usdoj.gov  
4 Re: DJ # 90-5-1-1-11696

5 As to the United States by mail: EES Case Management Unit  
6 Environment and Natural Resources Division  
7 U.S. Department of Justice  
8 P.O. Box 7611  
Washington, D.C. 20044-7611  
Re: DJ # 90-5-1-1-11696

9 As to EPA by email: \*\*\*

10 As to EPA by mail: Section Chief  
11 Water Section  
12 Enforcement Division (ENF -\*.\*)  
13 U.S. Environmental Protection Agency, Region IX  
14 75 Hawthorne Street  
San Francisco, CA 94105

15 As to GWA: Theresa G. Rojas, Esq.  
16 Legal Counsel  
17 Guam Waterworks Authority  
18 Ste. 200, Gloria B. Nelson Public Service Building  
688 Route 15  
Mangilao, Guam 96913  
tgrojas@guamwaterworks.org

19 As to Government of Guam: Graham Botha  
20 Deputy Attorney General  
21 Office of the Attorney General of Guam  
22 590 S. Marine Corps Drive, Ste. 801  
23 Tamuning, Guam 96913  
gbotha@oagguam.org

24 Jeffrey Moots  
25 Legal Counsel  
26 Office of the Governor of Guam  
27 PO Box 2950  
Hagåtña, Guam 96932  
jeffrey.moots@guam.gov

28 99. Any Party may, by written notice to the other Parties, change its designated notice

1 recipient or notice address provided above.

2 100. Notices submitted pursuant to this Section shall be deemed submitted upon  
3 mailing or sending via email, unless otherwise provided in this Consent Decree or by mutual  
4 agreement of the Parties in writing.

#### 5 **XIV. EFFECTIVE DATE**

6 101. The Effective Date of this Consent Decree shall be the date upon which this  
7 Consent Decree is entered by the Court or a motion to enter the Consent Decree is granted,  
8 whichever occurs first, as recorded on the Court's docket.

#### 9 **XV. RETENTION OF JURISDICTION**

10 102. The Court shall retain jurisdiction over this Consent Decree until termination of  
11 the Consent Decree, for the purpose of resolving disputes arising under this Decree or entering  
12 orders modifying this Decree, pursuant to Sections IX (Dispute Resolution) and XVI  
13 (Modification), or effectuating or enforcing compliance with the terms of this Decree.

#### 14 **XVI. MODIFICATION**

15 103. Nonmaterial modifications to this Consent Decree, including any attached  
16 Appendices, made by agreement of the Parties must be in writing and are effective when signed  
17 by the Parties. Material modifications to this Consent Decree, including any attached  
18 Appendices, made by agreement of the Parties must be in a writing signed by the Parties, and are  
19 effective upon approval by the Court.

20 104. Whether modifications are appropriately categorized as material or non-material  
21 shall be decided on a case by case basis. If the parties cannot agree whether a particular  
22 modification is material or non-material, the position of the United States will prevail.

23 105. Any request by Defendants for a modification pursuant to this Section XVI must  
24 be accompanied by the basis for the request and a description of how GWA intends to comply  
25  
26  
27  
28

1 with the proposed modified requirement, schedule or deadline, along with any supporting  
2 documentation. If applicable and appropriate to the modification request, a request for a  
3 modification may be based, among other things, on: (a) an integrated plan developed in  
4 accordance with Clean Water Act Section 402(s); or (b) a current Financial Capability  
5 Assessment (based on EPA's Combined Sewer Overflows—Guidance for Financial Capability  
6 Assessment and Schedule Development, referenced at EPA 832-B-97-004 and dated February of  
7 1997, and EPA's Financial Capability Assessment Framework, dated November 24, 2014, or  
8 subsequent versions thereof in effect on the Day that the request is submitted to EPA).

10 106. Any disputes concerning modification of this Decree shall be resolved pursuant to  
11 Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof  
12 provided by Paragraph 81, the Party seeking the modification bears the burden of demonstrating  
13 that it is entitled to the requested modification in accordance with Federal Rule of Civil  
14 Procedure 60(b).  
15

## 16 **XVII. TERMINATION**

17 107. After GWA has completed the requirements of Section V (Compliance  
18 Requirements), has thereafter maintained continuous satisfactory compliance with this Consent  
19 Decree for a period of not less than twelve (12) consecutive months, and has paid any accrued  
20 stipulated penalties as required by this Consent Decree, GWA may serve upon the United States  
21 a Request for Termination, stating that GWA has satisfied those requirements, together with all  
22 necessary supporting documentation.  
23

24 108. Following receipt by the United States of GWA's Request for Termination, the  
25 Parties shall confer informally concerning the Request and any disagreement that the Parties may  
26 have as to whether GWA has satisfactorily complied with the requirements for termination of  
27 this Consent Decree. If the United States agrees that the Decree may be terminated, the Parties  
28

1 shall submit, for the Court's approval, a joint motion or stipulation for termination of the Decree.

2 109. If the United States does not agree that the Decree may be terminated, GWA may  
3 invoke Dispute Resolution under Section IX of this Consent Decree. However, GWA shall not  
4 seek Dispute Resolution of any dispute regarding termination until sixty (60) Days after service  
5 of its Request for Termination.  
6

## 7 XVIII. PUBLIC PARTICIPATION

### 8 A. Consent Decree Lodging.

9 110. This Consent Decree shall be lodged with the Court for a period of not less than  
10 thirty (30) Days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United  
11 States reserves the right to withdraw or withhold its consent if the comments regarding the  
12 Consent Decree disclose facts or considerations indicating that the Consent Decree is  
13 inappropriate, improper, or inadequate. The Defendants consent to entry of this Consent Decree  
14 without further notice and agree not to withdraw from or oppose entry of this Consent Decree by  
15 the Court or to challenge any provision of the Decree, unless the United States has notified the  
16 Defendants in writing that it no longer supports entry of the Decree.  
17

### 18 B. Public Outreach, Engagement, and Participation by GWA.

19 111. Fourteen (14) days prior to any public meeting held by the Guam's Consolidated  
20 Commission on Utilities or Guam's Public Utilities Commission where projects required under  
21 Section V (Compliance Requirements) of this Consent Decree may be discussed, GWA shall  
22 post prominent notice on its website and social media pages of: (a) the time, date, and location of  
23 the public meeting; (b) a list of the relevant meeting topics; and (c) a one (1) paragraph summary  
24 of how the public may submit questions, comments, or concerns regarding the meeting topics to  
25 GWA prior to the meeting. If any member of the public submits, at or before any such public  
26 meeting, a comment regarding any of the projects required under Section V (Compliance  
27  
28

1 Requirements) of this Consent Decree, GWA shall consider and respond to such comments (i)  
2 orally at the public meeting; and (ii) in writing within thirty (30) days of the public meeting.

3 Within thirty (30) days of sending (by e-mail or paper mailing) a written response to such public  
4 commenter, GWA shall prominently post on its website (a) a summary of the public comment;  
5 and (b) its written response to the comment.  
6

7 112. GWA shall on at least a monthly basis (i) post, to each of its social media pages,  
8 one (1) status update about GWA's progress or completion of projects required under Section V  
9 (Compliance Requirements) of this Consent Decree; and (ii) briefly summarize, in its internal  
10 weekly employee newsletter/update, a status update regarding progress or completion of projects  
11 required under Section V (Compliance Requirements). GWA should aim to provide  
12 informational or educational project updates for projects that have an impact on human health  
13 and the environment, and are of interest to the public. GWA may use its discretion in selecting  
14 compliance projects to include in said updates.  
15

16 113. Nothing herein is intended to limit additional public outreach, engagement, or  
17 participation by GWA, Guam's Consolidated Commission on Utilities, or Guam's Public  
18 Utilities Commission.  
19

#### 20 **XIX. SIGNATORIES/SERVICE**

21 114. Each undersigned representative of the Defendants and the Assistant Attorney  
22 General for the Environment and Natural Resources Division of the Department of Justice  
23 certifies that he or she is fully authorized to enter into the terms and conditions of this Consent  
24 Decree and to execute and legally bind the Party he or she represents to this document.  
25

26 115. This Consent Decree may be signed in counterparts, and its validity shall not be  
27 challenged on that basis. The Defendants agree to accept service of process by the Court's  
28 electronic filing service or by mail with respect to all matters arising under or relating to this

1 Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the  
2 Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not  
3 limited to, service of a summons. The Defendants need not file an answer to the Complaint in  
4 this action unless or until the Court expressly declines to enter this Consent Decree, in which  
5 case Defendant's answer would be due 30 Days following the Court's order.  
6

7 **XX. INTEGRATION**

8 116. This Consent Decree constitutes the final, complete, and exclusive agreement and  
9 understanding among the Parties with respect to the settlement embodied in the Decree and  
10 supersedes all prior agreements and understandings, whether oral or written, concerning the  
11 settlement embodied herein. Other than deliverables that are subsequently submitted and  
12 approved pursuant to this Decree, the Parties acknowledge that there are no representations,  
13 agreements, or understandings relating to the settlement other than those expressly contained in  
14 this Consent Decree.  
15

16 **XXI. JUDGMENT**

17 117. Upon approval and entry of this Consent Decree by the Court, this Consent  
18 Decree shall constitute a judgment of the Court as to the United States and the Defendants. The  
19 Parties recognize that final resolution of the claims set forth in the Complaint will require further  
20 remedial action.  
21

22 **XXII. HEADINGS**

23 118. Headings to the Sections and Subsections of this Consent Decree are provided for  
24 convenience and do not affect the meaning or interpretation of the provisions of this Consent  
25 Decree.  
26  
27  
28



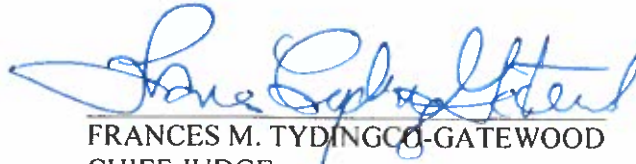
XXIII. APPENDICES

1  
2 119. The following Appendices are attached to and part of this Consent Decree:

3 "Appendix A" is a list of pipe segments that are inaccessible for CCTV  
4 inspection; and

5 "Appendix B" is a map of the Sewer Capacity Assurance Projects, Route 1 –  
6 Dededo.

7 Dated and entered this 9<sup>th</sup> day of August, 2024

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9   
10 FRANCES M. TYDINGCO-GATEWOOD  
11 CHIEF JUDGE  
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28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*  
2 *Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004.

3 FOR THE UNITED STATES OF AMERICA:

4 TODD KIM  
5 Assistant Attorney General  
6 Environment and Natural Resources Division  
7 U.S. Department of Justice

8 **BETHANY** Digitally signed by  
**ENGEL** BETHANY ENGEL  
Date: 2024.01.30  
16:57:07 -05'00'

9 Date

BETHANY ENGEL  
KAYCI G. HINES  
10 Environmental Enforcement Section  
11 Environment and Natural Resources Division  
12 U.S. Department of Justice  
13 Washington, D.C. 20044-7611  
14 Telephone: 202-514-6892

15 SHAWN N. ANDERSON  
16 United States Attorney  
17 Districts of Guam and the NMI

18 MIKEL W. SCHWAB  
19 Assistant United States Attorney  
20 Suite 500, Sirena Plaza  
21 108 Hernan Cortez  
22 Hagåtña, Guam 96910  
23 Telephone: 671-472-7332  
24  
25  
26  
27  
28

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*  
2 *Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004.

3 FOR THE U.S. ENVIRONMENTAL PROTECTION  
4 AGENCY:

5 **SYLVIA QUA**

Digitally signed by SYLVIA  
QUAST  
Date: 2023.10.31 12:07:32  
-07'00'

6 \_\_\_\_\_  
7 Date

SYLVIA QUA

Regional Counsel

U.S. Environmental Protection Agency, Region IX

9 OF COUNSEL:

10 JANET MAGNUSON

Assistant Regional Counsel

U.S. Environmental Protection Agency, Region IX

Office of Regional Counsel

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*  
2 *Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004 .

3 FOR THE U.S. ENVIRONMENTAL PROTECTION  
4 AGENCY OFFICE OF ENFORCEMENT AND  
5 COMPLIANCE ASSURANCE:

6  
7  
8 12/08/23

9 DATE

10  
11 JOSEPH  
12 THEIS

Digitally signed by  
JOSEPH THEIS  
Date: 2023.12.08  
08:49:22 -05'00'

13 JOSEPH G. THEIS

14 Acting Director  
15 Office of Civil Enforcement  
16 Water Enforcement Division  
17 U.S. Environmental Protection Agency

18  
19  
20 12/4/23

21 DATE

22  
23 CHRISNA  
24 BAPTISTA

Digitally signed by  
CHRISNA BAPTISTA  
Date: 2023.12.04  
14:53:42 -05'00'

25 CHRISNA BAPTISTA

26 Attorney Advisor  
27 Office of Civil Enforcement  
28 Water Enforcement Division  
U.S. Environmental Protection Agency

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States*  
2 *v. Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004.

3  
4 FOR THE GUAM WATERWORKS AUTHORITY:

5  
6 

7 \_\_\_\_\_  
Date

8 \_\_\_\_\_  
MIGUEL C. BORDALLO, P.E.  
General Manager

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States*  
2 *v. Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004.

3 FOR THE GOVERNMENT OF GUAM:

4 *Joseph A. Guzman*

5 *for*

6 \_\_\_\_\_  
DOUGLAS B. MOYLAN

7 ATTORNEY GENERAL OF GUAM

8  
9  
10 *10/23/23*  
Date

11 \_\_\_\_\_  
Date

12 \_\_\_\_\_  
LOU LEON GUERRERO  
GOVERNOR OF GUAM

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v.*  
2 *Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004..

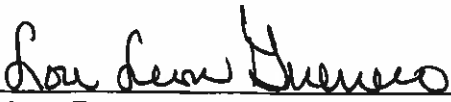
3 FOR THE GOVERNMENT OF GUAM:

4  
5  
6 Date

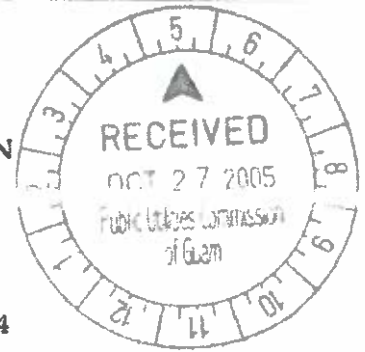
DOUGLAS B. MOYLAN  
ATTORNEY GENERAL OF GUAM

7  
8  
9  
10 Date

10/24/23

  
11 LOURDES A. LEON GUERRERO  
GOVERNOR OF GUAM

BEFORE THE GUAM PUBLIC UTILITIES COMMISSION



ADMINISTRATIVE DOCKET  
CONTRACT REVIEW PORTOCOL FOR  
GUAM WATERWORKS AUTHORITY

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DOCKET 00-04

ORDER

Pursuant to its authority under 12 GCA Section 12004, the Guam Public Utilities Commission [PUC] establishes the following protocol to identify and review regulated contracts and obligations of Guam Waterworks Authority [GWA]:

1. The following GWA contracts and obligations shall require prior PUC approval under 12 GCA 12004, which shall be obtained before the procurement process is begun:
  - a) All capital improvement projects (CIP) in excess of \$1,000,000 whether or not a project extends over a period of one year or several years;
  - b) All capital items by account group, which in any year exceed \$1,000,000;
  - c) All professional service procurements in excess of \$1,000,000;
  - d) All externally funded loan obligations and other financial obligations such as lines of credit, bonds, etc. in the excess of \$1,000,000 and any use of said funds;
  - e) Any contract or obligation not specifically referenced above which exceeds \$1,000,000, not including individual contracts within an approved CIP or contract;
  - f) Any internally funded procurement in excess of a CIP expenditure ceiling, which PUC shall establish on or before November 15 of each fiscal year.
  - g) Any agreement to compromise or settle disputed charges for services by GW A, when the amount of the waived charges would exceed \$1,000,000.



2. For contract that involve the receipt by GWA of revenues or reimbursement of costs in excess \$1,000,000, the following procedure will apply:

- a) GWA is permitted to evaluate the contract without PUC approval;
- b) Prior to entering into the contract, GWA will provide the following to PUC:
  - i) GWA's governing body resolution authorizing the contract.
  - ii) An affidavit from GWA management stating that the contract does not produce an increased revenue requirement with supporting documentation.
  - iii) A narrative description of the contract.
- c) The contract will be deemed approved unless rejected by PUC within 30 days after an adequate filing [as determined by the ALJ] has been made by GWA pursuant to subparagraph (b).

3. Emergency procurements, which are made by GW A under 5 CCA section 5215, shall not require PUC approval; provided, however that GWA shall file its section 5215 declaration, the governor's written approval of same, and the procurement details, as set forth in paragraph 5(b) below, within 20 days of the declaration. Any emergency procurement funded by other than bond revenues shall be included in the CIP ceiling established under paragraph 1(f).

4. With regard to multi-year contracts:

- a) The term of a contract or obligation (*procurement*) will be the term stated therein, including all options for extension or renewal.
- b) The test to determine whether a procurement exceeds the \$1,000,000 threshold for PUC review and approval (*the review threshold*) is the total estimated cost of the procurement, including cost incurred in any renewal options.
- c) For a multi-year procurement with fixed terms and fixed annual costs, GW A must obtain PUC approval if the total costs over the entire procurement term exceed the review threshold. No additional PUC review shall be required after the initial review process.

d) For multi-year procurements with fixed terms and variable annual costs, GWA shall seek PUC approval of the procurement if the aggregate cost estimate for the entire term of the procurement exceeds its review threshold. On each anniversary date during the term of the procurement, GWA will file a cost estimate for the coming year of the procurement. GWA shall seek PUC approval in the event a procurement subject to this paragraph should exceed 120% of the aggregate cost initially approved by PUC.

e) Unless for good cause shown, any petition for PUC approval of a multi-year procurement must be made sufficiently in advance of the commencement of the procurement process to provide PUC with reasonable time to conduct its review.

5. On or before September 15 of each year, GWA will use best efforts to file with PUC its construction budget for the coming fiscal year plus estimates for the subsequent two fiscal years. The filing shall contain a description of each CIP contained with the budget and estimates. Project descriptions should be sufficiently detailed to identify the specific location and type of equipment to be purchased, leased or installed. For capital items that are subject to review by account group, GWA shall file information equivalent to that submitted to its governing body for these items.

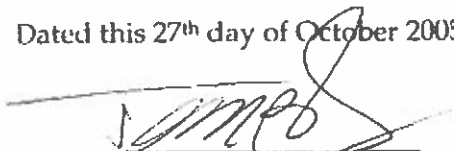
6. With regard to any contract or obligation [*procurement*], which requires PUC approval under this Order, GWA shall initiate the regulatory review process through a petition, which shall be supported with the following:

- a) A resolution from the Consolidated Commission on Utilities [CCU], which confirms that after careful review of the documentation described in subparagraph (b) below and upon finding that the proposed procurement is reasonable, prudent and necessary, CCU has authorized GWA to proceed with the procurement, subject to regulatory review and approval.
- b) The documentation on which CCU based its approval under subparagraph (a) above, which shall include, at a minimum, a report from management or an independent third party, which contains the following:
  - i. A description of the project, including timeframes, time constraints and deadlines, and a justification of its need.

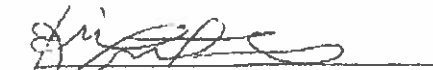
- ii. An analysis from a technical and cost benefit perspective, of all reasonable alternatives for the procurement.
  - iii. A detailed review of the selected alternative, which establishes the basis of selection and that it is economically cost effective over its life.
  - iv. Cost estimates and supported milestones for the selected alternative.
  - v. The projected source of funding for the project with appropriate justification and documentation.
  - vi. A supporting finding that the procurement is necessary within the context of other utility priorities.
7. If during any fiscal year, GWA desires to undertake a contract or obligation covered by paragraph 1, for which approval has not otherwise been received, it may file an application with the PUC for approval of such contract or obligation, which shall contain the information required in paragraph 6 above. GWA shall obtain PUC approval thereof before the procurement process is begun.
8. GWA shall, on or before December 1 of each year, file a report on the contracts and obligations approved by PUC for the prior fiscal year pursuant to this Protocol. This report shall show the amount approved by PUC and the actual expenditures incurred during the preceding fiscal year for each such contract and obligation and other changes from the prior filing in cost estimates, start dates and inservice or completion dates.
9. GWA shall not incur expenses for PUC approved contracts and obligations in excess of 20% over the amount authorized by the Commission without prior PUC approval. In the event that GWA estimates that it will exceed the PUC approved level of expenditures by more than 20%, it shall submit to PUC the revised estimate and full explanation of all additional cost.
10. GWA shall file with PUC monthly financial reports within five working days of presentation of monthly financial reports to its governing body.


11. To the extent GW A submits a filing to PUC under this order which PUC staff believes is incomplete or deficient, it shall notify GWA and the PUC within 15 calendar days thereof with specific indication of the alleged incompleteness or deficiency.
12. PUC staff will use best efforts to be prepared for hearing within 45 days of a complete GW A filing under the terms of paragraph 6 above. PUC's administrative law judge, in his judgment, is authorized, to shorten the above 45 day period, for good cause shown by GWA.
13. Within the context of a rate or management audit proceeding, PUC staff may review the prudence of all procurement or obligations whether or not subject to review herein.
14. PUC's administrative law judge is authorized to interpret the meaning of any provision of this order, in furtherance of the contract review process.

Dated this 27<sup>th</sup> day of October 2005.

  
\_\_\_\_\_  
Terrence M. Brooks

  
\_\_\_\_\_  
Joseph M. McDonald

  
\_\_\_\_\_  
Edward C. Crisostomo

  
\_\_\_\_\_  
Rowena E. Perez