

**AGREEMENT
BETWEEN OWNER AND CONTRACTOR
FOR CONSTRUCTION CONTRACT (STIPULATED PRICE)**

THIS AGREEMENT is by and between Guam Waterworks Authority ("Owner") and
Sumitomo Mitsui Construction Co, LTD ("Contractor").

Owner and Contractor hereby agree as follows:

ARTICLE 1 – WORK

Contractor shall complete all Work, for the Project, as specified and indicated in the Contract Documents.

Refer to Article 1 (1.01 & 1.02) in Technical Data document for the Work and Project description(s), which shall be incorporated herein.

ARTICLE 2 – ENGINEER

Refer to Article 2 (2.01, 2.02 & 2.03) Technical Data document, which shall be incorporated herein.

ARTICLE 3 – CONTRACT TIMES

3.01 Time of the Essence

- A. Time is of the essence for all Milestones, if any, Substantial Completion, and completion and readiness deadlines for work and final payment(s) as stated in the Contract Documents.

3.02 Contract Times: Days

Refer to Article 3.02 Technical Data document, which shall be incorporated herein

3.03 Liquidated Damages

Refer to Article 3.03 Technical Data document, which shall be incorporated herein

3.04 Special Damages

- A. In addition to the amount provided for liquidated damages, Contractor shall reimburse Owner (1) for any fines or penalties imposed on Owner as a direct result of the Contractor's failure to attain Substantial Completion according to the Contract Times, and (2) for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in Paragraph 4.02 for Substantial Completion (as duly adjusted pursuant to the Contract), until the Work is substantially complete.
- B. After Contractor achieves Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work within the Contract Times, Contractor shall reimburse Owner for the actual costs reasonably incurred by Owner for engineering, construction observation, inspection, and administrative services needed after the time specified in

Paragraph 4.02 for Work to be completed and ready for final payment (as duly adjusted pursuant to the Contract), until the Work is completed and ready for final payment.

ARTICLE 4 – CONTRACT PRICE

4.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents and the amounts that follow, subject to adjustment under the Contract:

A. For all Work other than Unit Price Work, a lump sum of: \$14,956,418.00.

All specific cash allowances are included in the above price in accordance with Paragraph 13.02 of the General Conditions.

B. For all Unit Price Work, an amount equal to the sum of the extended prices (established for each separately identified item of Unit Price Work by multiplying the unit price times the actual quantity of that item):

Unit Price Work					
Item No.	Description	Unit	Estimated Quantity	Unit Price	Extended Price
Total of all Extended Prices for Unit Price Work (subject to final adjustment based on actual quantities)					\$_____.

The extended prices for Unit Price Work set forth as of the Effective Date of the Contract are based on estimated quantities. As provided in Paragraph 13.03 of the General Conditions, estimated quantities are not guaranteed, and determinations of actual quantities and classifications are to be made by Engineer.

C. Total of Lump Sum Amount and Unit Price Work (subject to final Unit Price adjustment) \$0.00.

D. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 5 – PAYMENT PROCEDURES

5.01 *Submittal and Processing of Payments*

A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Engineer as provided in the General Conditions with the exception of 15.01 D., which will now reflect the following:

D. Payments Becomes Due

1. Forty-five (45) days after presentation of the Application for the Payment to Owner with Engineer's recommendation, the amount recommended (subject to any Owner set-offs) will become due, and when due will be paid by Owner to Contractor.

5.02 Progress Payments; Retainage

- A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 15th day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below, provided that such Applications for Payment have been submitted in a timely manner and otherwise meet the requirements of the Contract. All such payments will be measured by the Schedule of Values established as provided in the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no Schedule of Values, as provided elsewhere in the Contract.
 1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may withhold, including but not limited to liquidated damages, in accordance with the Contract
 - a. 90 percent of Work completed (with the balance being retainage). And
 - b. 90 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts set off by Owner pursuant to Paragraph 15.01.E of the General Conditions, and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the punch list of items to be completed or corrected prior to final payment.

5.03 Final Payment

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 15.06 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 15.06.

ARTICLE 6 – INTEREST

- 6.01 Not applicable.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Contract, Contractor makes the following representations:
 - A. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
 - B. Contractor has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or adjacent to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings, and (2) reports and drawings relating to Hazardous Environmental Conditions, if any, at or adjacent

to the Site that have been identified in the Supplementary Conditions, especially with respect to Technical Data in such reports and drawings.

- E. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and (3) Contractor's safety precautions and programs.
- F. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that without exception all prices in the Agreement are premised upon performing and furnishing the Work required by the Contract Documents.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 Contents

- A. The Contract Documents consist of the following:
 - 1. This Agreement (pages 1 to 9, inclusive).
 - 2. Performance bond (pages ____ to ____, inclusive).
 - 3. Payment bond (pages ____ to ____, inclusive).
 - 4. Other bonds.
 - a. ____ (pages ____ to ____, inclusive).
 - 5. General Conditions (pages 1 to 68, inclusive).
 - 6. Supplementary Conditions (pages 1 to 12, inclusive).
 - 7. Specifications as listed in the table of contents of the Project Manual.
 - 8. The Drawings listed on the attached sheet index.
 - 9. Addenda (numbers ____ to ____, inclusive).
 - 10. Exhibits to this Agreement (enumerated as follows):
 - a. Contractor's Bid (pages ____ to ____, inclusive).

NOTE(S) TO USER:

11. The following which may be delivered or issued on or after the Effective Date of the Contract and are not attached hereto:
 - a. Notice to Proceed.
 - b. Work Change Directives.
 - c. Change Orders.
 - d. Field Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 Assignment of Contract

- B. Unless expressly agreed to elsewhere in the Contract, no assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, money that may become due and money that is due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its successors, assigns, and legal representatives to the other party hereto, its successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 Severability

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:

1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process or in the Contract execution;
2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 Other Provisions

- A. Owner stipulates that if the General Conditions that are made a part of this Contract are based on EJCDC® C-700, Standard General Conditions for the Construction Contract, published by the Engineers Joint Contract Documents Committee®, and if Owner is the party that has furnished said General Conditions, then Owner has plainly shown all modifications to the standard wording of such published document to the Contractor, through a process such as highlighting or "track changes" (redline/strikeout), or in the Supplementary Conditions.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement.

This Agreement will be effective on 4/11/2025 (which is the Effective Date of the Contract).

OWNER:

Guam Waterworks Authority

By:  4/11/2025
for MIGUEL C. BORDALLO, P.E.

Title: General Manager

Attest: _____

Title: _____

Address for giving notices:

Gloria B Nelson Public Service Building
688 Route 15 Mangilao Guam 96913

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CERTIFIED FUNDS AVAILABLE:

By: 
TALING M. TAITANO, CPA, CGFM
GWA Chief Financial Officer

Date: 4/10/2025

Contract Amount Phase A: \$14,956,418.00

Amount Certified: \$1,101,585.84 (M96902619)
\$13,854,832.16 (M98T48323)

Funding Source: USEPA SRF Grant

CONTRACTOR:

Sumitomo Mitsui Construction Co., LTD

By:  3/25/2025
TAKEYUKI SHIINO

Title: General Manager
(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____
(where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

APPROVED AS TO FORM:

By: 
THERESA G. ROJAS, Esq.
GWA Legal Counsel

Date: 3/27/2025

Note: Contract sent to OAG on 12/03/24. OAG review requested by 12/17/24. As of 3/26/25 no OAG response was received. If any amendment as to form or legality is later required, GWA can comply and make amendments and apply remedies at 5 GCA 5452.

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TECHNICAL DATA

ARTICLE 1-WORK

- 1.01 Contractor shall complete all Work for the Project as specified and indicated in the Contract Documents. The Work is generally described as follows:
Establish pressure zones based on design plans and specifications.
- 1.02 The Project is generally described as follows: **PRESSURE ZONE REALIGNMENT PHASE 2**
Construction PROJECT: GWA Project Number: W18-001-BND
Phase A sites:
- Nimitz Hill
 - Larson Road
 - Hawaiian
 - Pago
 - Volcano
 - Army
 - Tri-Intersection
 - Route 15
 - East Agana Meter
 - Asan Meter
 - Sinajana

Article 2-ENGINEER

- 2.01 The part of the Project that pertains to the Work has been designed by GHD
- 2.03 The Owner has retained AmOrient Engineering as Construction Manager ("Resident Project Representative") to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

ARTICLE 3- CONTRACT TIMES

- 3.02 Contract Times: Days
- A. The Work will be substantially completed within the following days after the date when the Contract Times commence to run as provided in Paragraph 4.01 of the General Conditions:
- B. The Work for Pressure Zone Realignment Phase 2 Phase A Project will be substantially completed within 730 calendar days from Notice to Proceed issuance as provided in Paragraph 4.01 of the General Conditions, and completed and ready for final payment in accordance with Paragraph 15.06 of the General Conditions within 790 days after the date when the Contract Times commence to run.
- C. Parts of the Work shall be substantially completed on or before the following Milestone(s):



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."

Gloria B. Nelson Public Service Building | 688 Route 15, Mangilao, Guam 96913

P.O. Box 3010, Hagatna, Guam 96932

Tel. No. (671) 300-6066 Fax. No. (671) 648-3290

February 24, 2025

Takeyuki Shiino
General Manager
Sumitomo Mitsui Construction Co., Ltd.
P.O. Box 9670,
Tamuning, Guam 96931

Subject: Pressure Zone Realignment Phase II - Phased Contract

Dear Mr. Shiino,

The Guam Waterworks Authority (GWA) regrets to inform you that, due to current budgetary constraints, GWA is unable to contract the entire Bid Schedule amount of \$23,242,777.00 at this time. GWA is currently able to fund only \$15,720,226.00. However, to ensure the project's successful completion, GWA proposes to maintain its intent to award to Sumitomo the entire project scope; however, it must divide the project into two phases: Phase A and Phase B and may only contract with Sumitomo to complete the construction for Phase A alone.

The sites in Phase A were selected due to their capability to collaborate with the sites installed in Pressure Zone Realignment Phase I project. Below is the list of sites and their projected cost based on your Bid Schedule.

Phase A sites:

Cost: \$15,720,226.00

- Nimitz Hill
- Larson Road
- Hawaiian
- Pago
- Volcano
- Army
- Tri-Intersection
- Route 15
- East Agana Meter
- Asan Meter
- Sinajana

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Phase B sites:

Cost: \$7,522,551.00

- Talofoto Meter
- Dairy Road PRSV
- Gayinero PRSV
- Latte Heights PRSV
- Mangilao Tanks Meter Vault

Should you agree, GWA will proceed with Phase A covering a portion of the project's scope. Upon securing the necessary funding, GWA will contract and initiate Phase B, thereby completing the Pressure Zone Realignment Phase II project. GWA estimates having the remaining and available balance for Phase B of \$7,522,551.00 by the start of Fiscal year 2026.

At this time, GWA will enter a contract with your firm for Phase A for \$15,720,226.00. Please acknowledge if GWA and your firm can proceed with this agreement.

☒ We concur with this agreement. Sign and Date _____


TAKEYUKI SHIINO

Feb.25, 2025

GENERAL MANAGER

☐ We disagree with this agreement. Sign and Date _____

TAKEYUKI SHIINO

GENERAL MANAGER

Should you have any questions please contact Mrs. Jessey M. Leon Guerrero, Acting Engineering Supervisor CIP Water at jmendiola@guamwaterworks.org.

Sincerely,



Brett Railey, P.E.

Assistant General Manager Engineering