

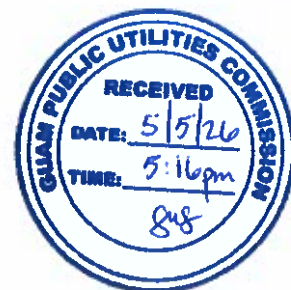
BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

PETITION FOR APPROVAL OF )  
CONTRACTS WITH JMI-EDISON )  
AND TOTAL CHEMICAL RESOURCES )  
FOR WASTEWATER CHEMICALS )  
FOR HAGATNA WWTP BY GUAM )  
WATERWORKS AUTHORITY )

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GWA DOCKET 26-06

ALJ REPORT



**INTRODUCTION**

This matter comes before the Guam Public Utilities Commission (the “PUC” or the “Commission”) pursuant to the April 6, 2026 Petition for Approval of Contracts with JMI-Edison and Total Chemical Resources for Wastewater Chemicals for the Hagåtña Waste Water Treatment Plant (“Petition”), filed by the Guam Waterworks Authority (“GWA”).

**BACKGROUND**

Earlier last year, GWA issued Invitation for Bid 2024-16 (the “IFB”) soliciting bids for the necessary chemicals to operate the Hagåtña Wastewater Treatment Plant (“Hagåtña Plant”).<sup>1</sup> Specifically, the IFB sought bids for inorganic coagulant, flocculent aid/coagulant aid, and sludge dewatering cationic polymer. According to GWA, it received three (3) bids, and thereafter selected two (2) bidders.<sup>2</sup> In particular, Total Chemical Resources (“Total Chemical”) submitted the lowest responsive and responsible bid for inorganic coagulant; and JMI-Edison submitted the lowest responsive and responsible bids for flocculent aid/coagulant aid, and sludge dewatering cationic polymer.<sup>3</sup>

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<sup>1</sup> Petition, p. 1.

<sup>2</sup> Petition, pp. 1-2.

<sup>3</sup> Petition, pp. 1-2.

## **DISCUSSION**

### **A. Contract Review Protocol**

Pursuant to 12 G.C.A. §12105,<sup>4</sup> GWA may not enter into any contractual agreements or obligations which could increase rates and charges without the PUC's express approval. In addition, GWA's Contract Review Protocol requires that "[a]ll professional service procurements in excess of \$1,000,000" require "prior PUC approval under 12 G.C.A. §12004, which shall be obtained before the procurement process is begun . . . ."<sup>5</sup>

With respect to multi-year contracts, "[t]he term of a contract or obligation (procurement) will be the term stated therein, including all options for extension or renewal"; and that the "test to determine whether a procurement exceeds the \$1,000,000 threshold for the PUC review and approval (the review threshold) is the total estimated cost of the procurement, including cost incurred in any renewal options."<sup>6</sup> In this instance, GWA requests \$2,892,708.72 for the contract with Total Chemical, and \$1,212,912.27 for the contract with JMI-Edison, over the course of five (5) years, therefore requiring PUC review.<sup>7</sup>

### **B. GWA's Petition and Costs**

In its Petition, GWA submits that the Hagåtña Plant is undergoing certain upgrades and must provide chemically enhanced primary treatment as required by the U.S. E.P.A.

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<sup>4</sup> Formerly 12 G.C.A. §12004.

<sup>5</sup> GWA's Contract Review Protocol ("GWA CRP"), Administrative Docket 00-04, p. 1 (Oct. 27, 2005).

<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> Petition, p. 5.

and specified in §II A Paragraphs 2 and 5 of the 2011 Court Order.<sup>8</sup> These chemicals are required so that the Hagåtña Plant can meet U.S. E.P.A. National Pollutant Discharge Elimination System (NPDES) permit requirements.

As indicated in the Petition, the annual cost of inorganic coagulant is \$525,947.04 (at \$1.44 per pound), with a total cost of \$1,577,841.12 for three (3) years.<sup>9</sup> The exercise of two yearlong options would add an additional \$1,051,894.08.<sup>10</sup> In addition, GWA has requested, and the CCU approved, an additional ten percent (10%) contingency.<sup>11</sup>

With respect to flocculant aid/coagulant aid, the total cost is \$266,043.75 for three (3) years.<sup>12</sup> The exercise of two yearlong options would add an additional \$177,362.50, for a total of \$443,406.25 for a full five-year term.<sup>13</sup> In addition, GWA has requested, and the CCU approved, an additional ten percent (10%) contingency.<sup>14</sup>

With respect to sludge dewatering polymer, the total cost is \$395,545.02 for three (3) years.<sup>15</sup> The exercise of two yearlong options would add an additional \$263,696.68, for a total of \$659,241.70 for a full five-year term.<sup>16</sup> Again, GWA has requested, and the

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<sup>8</sup> Petition, p. 1.  
<sup>9</sup> Petition, p. 3.  
<sup>10</sup> Petition, p. 3.  
<sup>11</sup> Petition, pp. 3-4.  
<sup>12</sup> Petition, p. 4.  
<sup>13</sup> Petition, p. 4.  
<sup>14</sup> Petition, p. 4.  
<sup>15</sup> Petition, p. 4.  
<sup>16</sup> Petition, p. 4.

CCU approved, an additional ten percent (10%) contingency.<sup>17</sup> Funding for purchase of the chemicals will be from GWA's operating revenue.<sup>18</sup>

**C. GWA Resolution No. 12-FY2026**

The instant Petition is supported by GWA Resolution No. 12-FY2026 issued by the CCU at its February 24, 2026 meeting. In the Resolution, the CCU found that pursuant to federal court order, GWA is required to operate the Hagåtña Plant with "Chemically Enhanced Primary Treatment" and that such treatment requires the purchase of these chemicals as part of its treatment process.<sup>19</sup> The CCU further found that the terms of the bid proposals submitted by JMI-Edison and Total Chemical were fair and reasonable.<sup>20</sup> Accordingly, the CCU authorized GWA to enter into a contract with Total Chemical for inorganic coagulant, at an annual cost of \$525,947.04, and a total cost of \$1,577,841.12 for three years. The CCU additionally authorized contracts with JMI-Edison for flocculant aide, at an annual cost of \$88,681.25, and a total cost of \$266,043.75 for three years; and for sludge dewatering cationic polymer, at an annual cost of \$131,848.34, and a total cost of \$395,545.02 for three years.<sup>21</sup> The CCU further authorized GWA to exercise additional two yearlong options, thereby approving the corresponding costs associated with the exercise of such options.

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<sup>17</sup> Petition, pp. 4-5.

<sup>18</sup> GWA Resolution No. 12-FY2026, p. 4 (Feb. 24, 2026).

<sup>19</sup> GWA Resolution No. 12-FY2026, p. 1.

<sup>20</sup> GWA Resolution No. 12-FY2026, p. 4.

<sup>21</sup> GWA Resolution No. 12-FY2026, pp. 2-6.

## **CONCLUSION**

These chemicals are indispensable and required for GWA's daily wastewater operations, specifically to operate the Hagåtña Plant, and to stay in compliance with federal laws, permits and federal guidelines. Further, the PUC regularly reviews GWA's purchase of these wastewater chemicals. The three chemicals that are the subject of the instant Petition are generally used for primary and chemically enhanced wastewater treatment. Without these chemicals, GWA would not be able to properly operate the Hagåtña Plant. Therefore, the ALJ recommends that the PUC authorize GWA to enter into contracts with JMI-Edison and Total Chemical.

## **RECOMMENDATION**

Based on the record in this docket, and for the other reasons set forth above, the ALJ recommends that the PUC authorize the contract between GWA and JMI-Edison, for a total cost not to exceed \$1,102,647.95 for five years; and between GWA and Total Chemical, for a total cost not to exceed \$2,629,735.20 for five years. These contracts should be subject to the usual cost contingencies provided under the Contract Review Protocol.<sup>22</sup> A proposed Order for the Commission's consideration is attached.

Dated this 5<sup>th</sup> day of May, 2026.



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**JOEPHET R. ALCANTARA**  
Administrative Law Judge

P263019.JRA

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<sup>22</sup> See Section 9, GWA's Contract Review Protocol, Administrative Docket 00-004, p. 1 (Oct. 27, 2005).

## FORMAL CONTRACT

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 by and between the **GUAM WATERWORKS AUTHORITY (“GWA”)**, whose business address is Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913, and **JMI-Edison, (“Contractor”)**, whose mailing address is **130 Siket St. Harmon Industrial Park, Tamuning , Tumon Guam 96913** licensed to conduct business on Guam and having Guam business license No. \_\_\_\_\_.

**WITNESSETH**, whereas GWA intends to purchase Flocculant Aid/Coagulant Aid, Hydrex 6104 and Sludge Dewatering Cationic Polymer, Hydrex 6402 for the purpose of Wastewater Treatment Chemicals for the “Hagatna Wastewater Treatment Plantt.” which is considered by the United States Environmental Protection Agency a necessary task in order for GWA to provide wastewater treatment.

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

### **SECTION 1. THE CONTRACTOR AGREES:**

To sell to GWA Flocculant Aid/Coagulant Aid, Hydrex 6104 and Sludge Dewatering Cationic Polymer, Hydrex 6402 at the cost provided in **IFB 2024-16**. and is subject to the terms and conditions of this Agreement. This Agreement shall be for a period of three (3) years beginning from the date both parties have executed this agreement. GWA reserves the right to renew this contract for two (2) additional twelve (12) month periods on the same terms and conditions set forth herein if both parties so agree in writing. Contractor agrees to maintain all time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Contractor also understands that it is responsible for its own taxes and fees which may be imposed relative to payment or performance hereunder (including but not limited to taxes for Contractor’s employees, corporate, and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing, signed by both parties.

- (a) **CONTRACT TIME:** The Contractor agrees to commence work under this contract upon written notice to proceed and to provide the goods and services as specified in the Bid Documents in the time, place and manner provided in the Bid Documents (as amended), but in no event for a period of longer than one year. Contractor agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health, and that time is always of the essence.
- (b) **SUB-CONTRACTORS:** The Contractor agrees to bind every sub-Contractor to the terms of the Contract Documents. Contractor further agrees that no sub-Contractor Contractor may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be

construed as creating any contractual relation between a sub-Contractor and the Guam Waterworks Authority.

**SECTION 2. GWA AGREES:**

To pay, and the Contractor agrees to accept in full payment for the Contract amount for the following Line Item 2. Flocculant Aid/Coagulant Aid, Hydrex 6104 and Line Item 3. Sludge Dewatering Cationic Polymer, Hydrex 6402 **Awarded** as specified in **IFB 2024-16**. Since this is an indefinite quantity contract, the amounts purchased may vary and the contract amount is subject to quantities ordered by GWA. From time to time, GWA shall issue a Purchase Order to Contractor to obtain such quantities of Flocculant Aid/Coagulant Aid, Hydrex 6104 and Sludge Dewatering Cationic Polymer, Hydrex 6402 as GWA may require. Contractor agrees to deliver the goods ordered on a Purchase Order to the designated delivery location as specified on the IFB delivery schedules. GWA agrees to pay Contractor for goods and services provided hereunder on a net thirty (30) day basis following receipt by GWA of a monthly invoice that is confirmed and approved by GWA. Among other things, any invoice submitted by Contractor shall include the Purchase Order number assigned to any particular goods delivered. GWA will not pay for attorney fees or collection costs unless awarded by a court of competent jurisdiction.

**SECTION 3. DETERMINATION FOR USE OF INDEFINITE QUANTITY CONTRACT.**

GWA faces the challenge of accurately determining the quantity of wastewater treatment chemicals required during a given contract period. This is due to the varying flow rates and continuous daily usage of these chemicals at multiple wastewater treatment facilities across the island. Additionally, upgrades to the treatment plants may result in changes in the required amounts of chemicals, although these changes are unknown at this point.

IFB 2024-16 requires an Indefinite Delivery Indefinite Quantity (IDIQ) contract for wastewater treatment chemicals to ensure continuity of operations and the protection of public health and safety. The need for this procurement is crucial to maintain compliance with the Clean Water Act (CWA). GWA also must maintain safety stock levels to ensure adequate availability of chemicals to ensure sufficient supply for continuous treatment of wastewater.

**SECTION 4. CONTRACT DOCUMENTS:**

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

- a. Invitation to Bid
- b. Instructions to Bidder OR Contractors
- c. Bid

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

Contractor agrees that Contractor's representations set forth in items (d), (e), (f), (h) and (i) above shall remain in full force and effect throughout the term of this Contract.

**SECTION 5. LIQUIDATED DAMAGES:**

When the Contractor is given notice of delay or nonperformance as specified in Paragraph (l) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either GWA reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due GWA. The contractor remains liable for damages caused other than by delay.

**SECTION 6. COVENANT AGAINST CONTINGENT FEES:**

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

**SECTION 7. OTHER CONTRACTS:**

GWA may award other contracts for additional work, and the Contractor shall fully cooperate with such other contractors and carefully fit his own work to that provided under other contracts

as may be directed by the Contracting Officer. The Contractor shall not commit or permit any act which will interfere with the performance of work by any other contractor.

**SECTION 8. DISPUTES:**

GWA and the contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by GWA in writing within sixty (60) days after the contractor shall request GWA in writing to issue a final decision. If GWA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as though GWA had issued a decision adverse to the contractor.

GWA shall immediately furnish a copy of the decision to the contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

GWA's decision shall be final and conclusive, unless fraudulent or unless the contractor appeals the decision as follows:

(a) For disputes involving money owed by or to GWA under this contract, the contractor files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GWA no later than eighteen months after the decision is rendered by GWA or from the date when a decision should have been rendered.

(b) For all other disputes arising under this contract, the contractor files an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty days of GWA's decision or from the date the decision should have been made.

The contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The contractor shall comply with GWA's decision and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where the contractor claims a material breach of this contract by GWA. However, if GWA determines in writing that continuation of services under this contract is essential to the public's health or safety, then the contractor shall proceed diligently with performance of the contract notwithstanding any claim of material breach by GWA.

**SECTION 9. CONTRACT BINDING:**

It is agreed that this Contract and all the Covenants hereof shall insure to the benefit of and binding upon GWA and the Contractor respectively and his parties, successors, assignees and

legal representative. Neither GWA nor the Contractor shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

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

**SECTION 10. GWA NOT LIABLE:**

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

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

**SECTION 11. NOTICES:**

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

To: **GUAM WATERWORKS AUTHORITY**  
Miguel C. Bordallo, P.E.  
GWA General Manager  
Gloria B. Nelson Public Service Building  
688 Route 15,  
Mangilao, Guam, 96913

To: **CONTRACTOR**  
JMI-Edison  
130 Siket St. Harmon Industrial Park  
Tamuning, Guam 96913  
Phone: (671) 646-6400  
E-mail: Romeo.oriondo@jmiguam.com

**SECTION 12. TERMINATION:**

**Section 12.1 – Termination For Default:**

(a) Default. If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or

any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Contract, GWA may notify Contractor in writing of the delay or non-performance and if not cured in thirty days or any longer time specified in writing by GWA, GWA may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. It is clarified that Contractor shall be paid all such amounts due to Contractor until the termination. In the event of termination in whole or in part GWA may procure similar supplies or services in a manner and upon terms deemed appropriate by GWA. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

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

(c) Compensation. Payment for completed supplies delivered and accepted by GWA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and GWA; if the parties fail to agree, GWA shall set an amount subject to Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GWA may withhold from amounts due Contractor such sums as GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse GWA for the excess costs incurred in procuring similar goods and services.

(d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified GWA within 15 (fifteen) days after the cause of the delay and the failure arises out of Force Majeure causes such as: acts of God; acts of the public enemy; acts of GWA and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, GWA shall ascertain the facts and extent of such failure, and, if such GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of GWA under the Clause entitled "Termination". (As used in this Clause the term "subcontractor" means subcontractor at any tier.)

(e) Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this Clause, it is determined for any reason that Contractor was

not in default under the provisions of this Clause, or that the delay was excusable under the provisions of Clause 20.2.4 (Excuse for Nonperformance or Delayed Performance), the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for convenience of GWA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of GWA, the Contract shall be adjusted to compensate for such termination and the Contract modified accordingly subject to Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

(f) Additional Rights and Remedies. The rights and remedies provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

### **Section 12.2 – Termination For Convenience:**

(a) Termination. GWA may, when the interests of GWA so require, terminate this contract in whole or in part, for the convenience of GWA. GWA shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to GWA. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Right to Supplies. GWA may require the contractor to transfer title and deliver to GWA in the manner and to the extent directed by GWA:

- (1) any completed supplies; and
- (2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall, upon direction of GWA, protect and preserve property in the possession of the contractor in which GWA has an interest. If GWA does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, §2706 (quoted at the end of 2 GAR § 6101(10)(d)). Utilization of this Section in no way implies that GWA has breached the contract by exercise of the Termination for Convenience Clause.

(d) Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2 GAR §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, GWA may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(2) GWA and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GWA, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

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

(i) contract prices for supplies or services accepted under the contract;

(ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph;

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

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

**SECTION 13. SEVERABLE PROVISIONS:**

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

**SECTION 14. GOVERNING LAW AND VENUE:**

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

**SECTION 15. OWNERSHIP OF DOCUMENTS:**

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

**SECTION 16. INDEMNITY:**

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

**SECTION 17. GENERAL COMPLIANCE WITH LAWS:**

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

**SECTION 18. ACCESS TO RECORDS AND OTHER REVIEW:**

The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for

inspection by the Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one day prior to the conclusion of this Agreement. Each subcontract by Contractor pursuant to this agreement shall include a provision containing the conditions of this Section.

**SECTION 19. SCOPE OF AGREEMENT.**

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Contractor by the GWA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

**SECTION 20. RESPONSIBILITY OF CONTRACTOR.**

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

GWA's review, approval, acceptance of, and payment for goods, fee, or for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Contractor's failure of performance of this contract and the Contractor shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Contractor's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

**SECTION 21. PRICE ADJUSTMENT.**

a) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- (1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) by unit prices specified in the contract or subsequently agreed upon;
- (3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;

(4) in such other manner as the parties may mutually agree; or

(5) in the absence of agreement between the parties, by a unilateral determination by GWA of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GWA in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

(b) Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

## **SECTION 22. CHANGE ORDERS.**

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

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

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

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

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

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

### **SECTION 23. STOP WORK ORDERS.**

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

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

### **SECTION 24. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.**

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

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

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

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

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

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

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

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

**SECTION 25. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS.**

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GWA and any Governmental Authority.

**SECTION 26. STATEMENT CONCERNING ETHICAL STANDARDS.**

In accordance with 2 GAR, Div. 4 § 11103(b), Contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement

Regulations.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GWA and any Governmental Authority.

**SECTION 27. EFFECTIVE DATE OF THIS CONTRACT.**

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

**IN WITNESS WHEREOF** the parties hereto have executed this contract as of the day and year first written.

**GUAM WATERWORKS AUTHORITY:**

**CONTRACTOR:**

\_\_\_\_\_  
Miguel C. Bordallo P.E.  
GWA General Manager

\_\_\_\_\_  
JMI-Edison  
130 Siket St. Harmon Industrial Park  
Tamuning, Guam 96913  
Phone: (671) 646-6400  
E-mail: Romeo.oriondo@jmiguam.com

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

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

Certified Funds Available:

Approved as to Form and Legality:

\_\_\_\_\_

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

Certifying Officer  
Guam Waterworks Authority

Staff Attorney, GWA

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

Guam Business License or Certificate of Authorization No.: INSERT NO.

Contract No.: \_\_\_\_\_

Vendor No.: \_\_\_\_\_

Contract Amount (Flocculant Aide/Coagulant- Hydrex 6104):

\$88,681.25 (Estimated annual value)

**Three Year Contract Term: \$266,043.75**

**Two Year Option Term: \$177,362.50(Estimated)**

**Five Year Term: \$443,406.25**

Contract Amount (Sludge Dewatering Cationic Polymer – Hydrex 6402):

\$131,848.34 (Estimated annual value)

**Three Year Contract Term: \$395,545.02**

**Two Year Option Term: \$263,696.68 (Estimated)**

**Five Year Term: \$659,241.70**

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

I, \_\_\_\_\_ certify that I am the Secretary of the corporation or managing partner named as Contractor herein; that \_\_\_\_\_ who signed this contract on behalf of the Contractor, was then \_\_\_\_\_ of said corporation/partnership by authority of said corporation of its governing body, and is within the scope of its corporate/partnership powers to bind said corporation/partnership to the terms and conditions of this Contract.

Signed: \_\_\_\_\_  
Corporate Secretary

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

(CORPORATE/PARTNERSHIP SEAL)

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

## FORMAL CONTRACT

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2026 by and between the **GUAM WATERWORKS AUTHORITY** (“GWA”), whose business address is Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913, and **Total Chemical Resources, (“Contractor”)**, whose mailing address is **P.O. Box 20730 GMF, Barrigada, , Guam 96913** licensed to conduct business on Guam and having Guam business license No. \_\_\_\_\_.

**WITNESSETH**, whereas GWA intends to purchase Inorganic Coagulant Achieve D1012 (ACH Power) for the purpose of Wastewater Treatment Chemicals for the “Hagatna Wastewater Treatment Plantt.” which is considered by the United States Environmental Protection Agency a necessary task in order for GWA to provide wastewater treatment.

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

### **SECTION 1. THE CONTRACTOR AGREES:**

To sell to GWA Inorganic Coagulant Achieve D1012 (ACH Power) at the cost provided in **IFB 2024-16**. and is subject to the terms and conditions of this Agreement. This Agreement shall be for a period of three (3) years beginning from the date both parties have executed this agreement. GWA reserves the right to renew this contract for two (2) additional twelve (12) month periods on the same terms and conditions set forth herein if both parties so agree in writing. Contractor agrees to maintain all. time all licenses, labor, insurance, material, equipment, tools and services necessary to perform and comply with this Contract and the Contract Documents as defined in Section 3 herein. Contractor also understands that it is responsible for its own taxes and fees which may be imposed relative to payment or performance hereunder (including but not limited to taxes for Contractor’s employees, corporate, and gross receipt taxes). GWA reserves the right to amend this Agreement or request a change order, but the right is subject to the mutual agreement of both parties and all amendments or change orders shall be in writing, signed by both parties.

- (a) **CONTRACT TIME:** The Contractor agrees to commence work under this contract upon written notice to proceed and to provide the goods and services as specified in the Bid Documents in the time, place and manner provided in the Bid Documents (as amended), but in no event for a period of longer than one year. Contractor agrees by placing their signature hereto that they have been placed on notice that the provision of the goods and services hereunder is necessary to protect the public health, and that time is always of the essence.
  
- (b) **SUB-CONTRACTORS:** The Contractor agrees to bind every sub-Contractor to the terms of the Contract Documents. Contractor further agrees that no sub-Contractor Contractor may be allowed to perform in any fashion whatsoever under this contract until such time as the express written approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-Contractor and the Guam

Waterworks Authority.

**SECTION 2. GWA AGREES:**

To pay, and the Contractor agrees to accept in full payment for the Contract amount for the following Line Item 1. Inorganic Coagulant Achieve D1012 (ACH Power) **Awarded** as specified in **IFB 2024-16**. Since this is an indefinite quantity contract, the amounts purchased may vary and the contract amount is subject to quantities ordered by GWA. From time to time, GWA shall issue a Purchase Order to Contractor to obtain such quantities of Inorganic Coagulant Achieve D1012 (ACH Power) as GWA may require. Contractor agrees to deliver the goods ordered on a Purchase Order to the designated delivery location as specified on the IFB delivery schedules. GWA agrees to pay Contractor for goods and services provided hereunder on a net thirty (30) day basis following receipt by GWA of a monthly invoice that is confirmed and approved by GWA. Among other things, any invoice submitted by Contractor shall include the Purchase Order number assigned to any particular goods delivered. GWA will not pay for attorney fees or collection costs unless awarded by a court of competent jurisdiction.

**SECTION 3. DETERMINATION FOR USE OF INDEFINITE QUANTITY CONTRACT.**

GWA faces the challenge of accurately determining the quantity of wastewater treatment chemicals required during a given contract period. This is due to the varying flow rates and continuous daily usage of these chemicals at multiple wastewater treatment facilities across the island. Additionally, upgrades to the treatment plants may result in changes in the required amounts of chemicals, although these changes are unknown at this point.

IFB 2024-16 requires an Indefinite Delivery Indefinite Quantity (IDIQ) contract for wastewater treatment chemicals to ensure continuity of operations and the protection of public health and safety. The need for this procurement is crucial to maintain compliance with the Clean Water Act (CWA). GWA also must maintain safety stock levels to ensure adequate availability of chemicals to ensure sufficient supply for continuous treatment of wastewater.

**SECTION 4. CONTRACT DOCUMENTS:**

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

- a. Invitation to Bid
- b. Instructions to Bidder OR Contractors
- c. Bid
- d. Form of Non-Collision Affidavit
- e. Bid Bond

- f. Certification of Bidder OR Contractors Regarding Equal Employment Opportunity
- g. Formal Contract (which shall control in the event of conflict between this and any other contract document)
- h. Performance Bond
- i. Payment Bond
- j. General Provisions
- k. Special Provisions
- l. Technical Specifications
- m. Plans
- n. Addenda/Amendments
- o. Answers to Questions (if GWA determines they are applicable).

Contractor agrees that Contractor's representations set forth in items (d), (e), (f), (h) and (i) above shall remain in full force and effect throughout the term of this Contract.

**SECTION 5. LIQUIDATED DAMAGES:**

When the Contractor is given notice of delay or nonperformance as specified in Paragraph (l) (Default) of the Termination for Default Clause of this contract and fails to cure in the time specified, the contractor shall be liable for damages for delay in the amount of one-fourth of one-percent (1%) of outstanding order per calendar day from date set for cure until either GWA reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under Paragraph (d) (Excuse for Nonperformance or Delayed Performance) of the Termination for Default Clause of this contract, liquidated damages shall not be due GWA. The contractor remains liable for damages caused other than by delay.

**SECTION 6. COVENANT AGAINST CONTINGENT FEES:**

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

**SECTION 7. OTHER CONTRACTS:**

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

**SECTION 8. DISPUTES:**

GWA and the contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by GWA in writing within sixty (60) days after the contractor shall request GWA in writing to issue a final decision. If GWA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as though GWA had issued a decision adverse to the contractor.

GWA shall immediately furnish a copy of the decision to the contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

GWA's decision shall be final and conclusive, unless fraudulent or unless the contractor appeals the decision as follows:

(a) For disputes involving money owed by or to GWA under this contract, the contractor files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GWA no later than eighteen months after the decision is rendered by GWA or from the date when a decision should have been rendered.

(b) For all other disputes arising under this contract, the contractor files an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty days of GWA's decision or from the date the decision should have been made.

The contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The contractor shall comply with GWA's decision and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where the contractor claims a material breach of this contract by GWA. However, if GWA determines in writing that continuation of services under this contract is essential to the public's health or safety, then the contractor shall proceed diligently with performance of the contract notwithstanding any claim of material breach by GWA.

**SECTION 9. CONTRACT BINDING:**

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

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

**SECTION 10. GWA NOT LIABLE:**

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

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

**SECTION 11. NOTICES:**

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

To: **GUAM WATERWORKS AUTHORITY**  
Miguel C. Bordallo, P.E.  
GWA General Manager  
Gloria B. Nelson Public Service Building  
688 Route 15,  
Mangilao, Guam, 96913

To: **CONTRACTOR**  
Total Chemical Resources  
P.O. BOX 20730 GMF  
Barrigada, Guam 96913  
Phone: (671) 646-4742  
E-mail: gcanovas@totalchemical.com

**SECTION 12. TERMINATION:**

**Section 12.1 – Termination For Default:**

(a) Default. If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Contract, GWA may notify Contractor in writing of the delay or non-performance and if not cured in thirty days or any longer time specified in writing by GWA,

GWA may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. It is clarified that Contractor shall be paid all such amounts due to Contractor until the termination. In the event of termination in whole or in part GWA may procure similar supplies or services in a manner and upon terms deemed appropriate by GWA. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

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

(c) Compensation. Payment for completed supplies delivered and accepted by GWA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by Contractor and GWA; if the parties fail to agree, GWA shall set an amount subject to Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GWA may withhold from amounts due Contractor such sums as GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse GWA for the excess costs incurred in procuring similar goods and services.

(d) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified GWA within 15 (fifteen) days after the cause of the delay and the failure arises out of Force Majeure causes such as: acts of God; acts of the public enemy; acts of GWA and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the contract requirements. Upon request of Contractor, GWA shall ascertain the facts and extent of such failure, and, if such GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of GWA under the Clause entitled "Termination". (As used in this Clause the term "subcontractor" means subcontractor at any tier.)

(e) Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this Clause, it is determined for any reason that Contractor was not in default under the provisions of this Clause, or that the delay was excusable under the provisions of Clause 20.2.4 (Excuse for Nonperformance or Delayed Performance), the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for

convenience of GWA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this Contract does not contain a clause providing for termination for convenience of GWA, the Contract shall be adjusted to compensate for such termination and the Contract modified accordingly subject to Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

(f) Additional Rights and Remedies. The rights and remedies provided in this Clause are in addition to any other rights and remedies provided by law or under this Contract.

### **Section 12.2 – Termination For Convenience:**

(a) Termination. GWA may, when the interests of GWA so require, terminate this contract in whole or in part, for the convenience of GWA. GWA shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

(b) Contractor's Obligations. The contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the contractor to assign the contractor's right, title, and interest under terminated orders or subcontracts to GWA. The contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

(c) Right to Supplies. GWA may require the contractor to transfer title and deliver to GWA in the manner and to the extent directed by GWA:

(1) any completed supplies; and

(2) such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated part of this contract.

The contractor shall, upon direction of GWA, protect and preserve property in the possession of the contractor in which GWA has an interest. If GWA does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, §2706 (quoted at the end of 2 GAR § 6101(10)(d)). Utilization of this Section in no way implies that GWA has breached the contract by exercise of the Termination for Convenience Clause.

(d) Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by 2

GAR §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, GWA may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(2) GWA and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 GAR §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by GWA, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

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

(i) contract prices for supplies or services accepted under the contract;

(ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph;

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

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

**SECTION 13. SEVERABLE PROVISIONS:**

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

**SECTION 14. GOVERNING LAW AND VENUE:**

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

**SECTION 15. OWNERSHIP OF DOCUMENTS:**

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

**SECTION 16. INDEMNITY:**

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

**SECTION 17. GENERAL COMPLIANCE WITH LAWS:**

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

**SECTION 18. ACCESS TO RECORDS AND OTHER REVIEW:**

The Contractor, including his subcontractors, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one day prior to the

conclusion of this Agreement. Each subcontract by Contractor pursuant to this agreement shall include a provision containing the conditions of this Section.

**SECTION 19. SCOPE OF AGREEMENT.**

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Contractor by the GWA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

**SECTION 20. RESPONSIBILITY OF CONTRACTOR.**

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

GWA's review, approval, acceptance of, and payment for goods, fee, or for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Contractor's failure of performance of this contract and the Contractor shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Contractor's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

**SECTION 21. PRICE ADJUSTMENT.**

a) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:

- (1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (2) by unit prices specified in the contract or subsequently agreed upon;
- (3) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (4) in such other manner as the parties may mutually agree; or

(5) in the absence of agreement between the parties, by a unilateral determination by GWA of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GWA in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

(b) Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

## **SECTION 22. CHANGE ORDERS.**

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

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

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

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

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

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

### **SECTION 23. STOP WORK ORDERS.**

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

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

### **SECTION 24. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.**

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

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

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

This notice shall state that the Contractor regards the act or omission as a reason which may

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

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

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

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

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

**SECTION 25. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS.**

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GWA and any Governmental Authority.

**SECTION 26. STATEMENT CONCERNING ETHICAL STANDARDS.**

In accordance with 2 GAR, Div. 4 § 11103(b), Contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher-tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GWA and any Governmental Authority.

**SECTION 27. EFFECTIVE DATE OF THIS CONTRACT.**

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

**IN WITNESS WHEREOF** the parties hereto have executed this contract as of the day and year first written.

**GUAM WATERWORKS AUTHORITY:**

**CONTRACTOR:**

\_\_\_\_\_  
Miguel C. Bordallo P.E.  
GWA General Manager

\_\_\_\_\_  
Total Chemical Resources  
P.O. BOX 20730 GMF  
Barrigada, Guam 96913  
Phone: (671) 646-4742  
E-mail: gcanovas@totalchemical.com

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

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

Certified Funds Available:

Approved as to Form and Legality:

\_\_\_\_\_  
Certifying Officer  
Guam Waterworks Authority

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

Staff Attorney, GWA

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

Guam Business License or Certificate of Authorization No.: INSERT NO.

Contract No.: \_\_\_\_\_

Vendor No.: \_\_\_\_\_

Contract Amount (Inorganic Coagulant- Achieve D1012 (ACH Power):

\$525,947.04 (Estimated annual value)

**Three Year Contract Term: \$1,577,841.12**

**Two Year Option Term: \$1,051,894.08(Estimated)**

**Five Year Term: \$2,629,735.20**

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

I, \_\_\_\_\_ certify that I am the Secretary of the corporation or managing partner named as Contractor herein; that \_\_\_\_\_ who signed this contract on behalf of the Contractor, was then \_\_\_\_\_ of said corporation/partnership by authority of said corporation of its governing body, and is within the scope of its corporate/partnership powers to bind said corporation/partnership to the terms and conditions of this Contract.

Signed: \_\_\_\_\_  
Corporate Secretary

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

(CORPORATE/PARTNERSHIP SEAL)

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