



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

GWA RESOLUTION NO. 01-FY2021

**RELATIVE TO APPROVAL OF MEMORANDUM OF AGREEMENT BETWEEN
THE DEPARTMENT OF PUBLIC WORKS AND THE GUAM WATERWORKS
AUTHORITY FOR PERMANENT ROAD REPAIR FOLLOWING
GUAM WATERWORKS AUTHORITY EMERGENCY REPAIRS**

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

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

WHEREAS, GWA makes hundreds of repairs each year to its infrastructure located within public rights-of-way and roadways under the jurisdiction of the Department of Public Works (“DPW”) which necessitate the permanent restoration/repair of damaged pavement within the roadways; and

WHEREAS, GWA has made roadway repairs in the past that do not meet DPW standards for pavement repair and restoration, and has relied in recent years on contractors engaged through small construction purchases to make permanent repairs, which is inefficient and cumbersome; and

WHEREAS, GWA has attempted to improve its road repair performance through the issuance of several construction procurements for an Indefinite Delivery/Indefinite Quantity (ID/IQ) bid for road repair services, all of which have been unsuccessful because no bids were submitted; and

1 **WHEREAS**, GWA will continue to utilize contracted services for road repairs, and will
2 improve its construction procurement in order to obtain an ID/IQ contractor as feasible resources
3 GWA can use to meet its obligations for repair work on Guam’s Roads which meet DPW
4 standards; and

5
6 **WHEREAS**, after several years of discussion and coordination, and as an additional
7 resource available to GWA, the Authority and DPW desire to enter into a Memorandum of
8 Agreement (“MOA”) (Exhibit “A”) for permanent road repairs by DPW or its contractors
9 following GWA emergency water and wastewater repairs; and

10
11 **WHEREAS**, the initial term of this MOA shall be for a basic term of five (5) years.

12
13 **WHEREAS**, in certain instances GWA will request that DPW or its pavement repair
14 contractor perform restoration on Guam Paved Roads following utility repairs initiated by GWA
15 and that GWA will be responsible for paying DPW for such repairs provided for in the terms of
16 the MOA; and

17
18 **WHEREAS**, GWA shall engage DPW in such repairs by issuing Work Orders / Task
19 Orders with estimates for repair quantities and a defined scope of work authorized by GWA, and
20 verified by joint inspection upon completion of such repairs; and

21
22 **WHEREAS**, the funding source for this MOA will be from GWA revenues.

23
24 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
25 does hereby approve and authorize the following:

- 26
27 1. The recitals set forth above hereby constitute the findings of the CCU.
28 2. The CCU finds that the terms of the Memorandum of Agreement are fair and
29 reasonable.
30 3. The CCU hereby authorizes the management of GWA to negotiate fair and
31 reasonable costs for road repair services with DPW.
32

- 1 4. Upon Managements' successful completion of cost negotiations, the CCU
2 authorizes Management to enter into the Memorandum of Agreement (Exhibit
3 "A") for permanent road repairs following GWA emergency water and
4 wastewater repairs with DPW;
5 5. The CCU hereby approves the use of funding sources from GWA revenues for
6 this MOA.

7
8 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the adoption
9 of this Resolution.

10
11 **DULY AND REGULARLY ADOPTED**, this 20th day of October 2020.

12
13 Certified by:

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15
16 **JOSEPH T. DUENAS**
17 Chairperson

13 Attested by:

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15
16 **MICHAEL T. LIMTIACO**
17 Secretary

18
19
20 **SECRETARY'S CERTIFICATE**

21
22 I, Michael T. Limtiaco, Board Secretary of the Consolidated Commission on Utilities as
23 evidenced by my signature above do hereby certify as follows:

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

28 AYES:

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29 NAYS:

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30 ABSENT:

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31 ABSTAIN:

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MEMORANDUM OF AGREEMENT

(PERMANENT ROAD REPAIR FOLLOWING GUAM WATERWORKS AUTHORITY
EMERGENCY REPAIRS)

THIS MEMORANDUM OF AGREEMENT (“MOA”) is hereby made by and between the **GOVERNMENT OF GUAM, DEPARTMENT OF PUBLIC WORKS** (hereinafter called “**DPW**”) whose business address is 542 North Marine Corps Drive, Tamuning, Guam 96913, and **GUAM WATERWORKS AUTHORITY** (hereinafter called “**GWA**”) whose business address is Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913 (hereafter collectively referred to as the “Parties” and individually, the “Party”).

WITNESSETH:

WHEREAS, DPW recently initiated a Highway and Village Pavement Repair project (hereinafter described as the “**DPW Project**”);

WHEREAS, the DPW Project will affect the utility facilities of the GWA which presently are located within the highway and village road right-of-way paved areas (collectively “**Guam’s Paved Roads**”);

WHEREAS, GWA has authority and obligation to install, operate and maintain utility infrastructure in all government easement’s and rights-of-way;

WHEREAS, DPW and GWA anticipate that GWA utility repairs will require restoration of Guam’s Paved Roads;

WHEREAS, in order that Guam’s Paved Roads are properly restored in a timely manner following any GWA work, the Parties desire that GWA and its pavement repair contractor or DPW and its pavement repair contractor perform all repairs related to GWA utility repairs in accordance with standards adopted by DPW: and

WHEREAS, in certain instances GWA will request that DPW or its pavement repair contractor perform restoration on Guam Paved Roads following utility repairs initiated by GWA and that GWA will be responsible for paying DPW for such repairs provided herein.

NOW, THEREFORE, in consideration of the agreements and undertakings set forth below and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

SECTION 1. SCOPE AND APPLICABILITY

1.1 Line Repair.

This MOA covers GWA line repair activities such as main breaks and leak repairs conducted by GWA personnel within public rights-of-way and easements. This MOA is not intended to apply to GWA

capital improvement / construction projects performed by GWA contractors or private developers for subsequent conveyance to GWA.

1.2 Line Replacement.

This MOA covers GWA line replacement when conducted in-house where GWA intends to repair its installed utility equipment and facilities. GWA shall submit to DPW detailed plans and specifications of the work which shall be sufficiently informative and complete to provide DPW with a clear description of the work required. The submittal shall include traffic control plans. GWA shall also submit to DPW a Utility Work Schedule, which shall note the times of the work and the method of performance for that work.

1.3 Non-Exclusivity.

GWA acknowledges that the use of easements and rights-of-way are non-exclusive, and DPW specifically reserves the right to grant, at any time, such additional permits, franchises or other rights for the use of any portion or all of the highways or public rights-of-way in Guam for any purpose and to any other person or entity, including itself, as it deems appropriate, subject to applicable Guam and federal law. At all times, GWA shall construct, repair and maintain its facilities so as not to interfere with other users/operators of the right-of-way. All construction and maintenance by GWA or its subcontractors shall be performed in accordance with prevailing industry standards.

SECTION 2. PERFORMANCE OF WORK

2.1 GWA Notice Prior to Excavation.

As required by 21 G.C.A. Section 71104, prior to any excavation or installation within the Guam's Paved Roads, highway or the public right-of-way, GWA shall provide sufficient notification of its intent to excavate to each user/operator having underground utilities in the proposed area of excavation. In the event of an emergency repair such as a main water or sewer break, GWA will notify DPW immediately following completion of their repair and securing of the site.

2.2 Coordination.

At all times, GWA shall coordinate its line repair or replacement activities with the DPW and other utilities and users of permitted areas in order to avoid any unnecessary cutting, damage or disturbance to the public right-of-way and other installed infrastructure.

2.3 Notices/Inspections.

GWA shall notify DPW's Highway Maintenance Section of the Division of Highways of the locations and extent of Guam's Paved Roads affected by GWA's line repair or replacement work, and the urgency of required repairs needed to Guam's Paved Roads, no later than two (2) weeks after the completion of the work performed by GWA. Excavation, restoration, reinstallation or repair of GWA's water and sewer lines, sewer manholes, valve covers, and related facilities in, under, on, through and along Guam's Paved Roads, for any lawful purpose shall be the sole responsibility and cost of GWA, its contractor or sub-contractor. Sink holes caused by GWA piping leaks will be assessed and, following a joint site visit, the scope of repairs will be agreed upon in writing.

2.4 Application of Cold Asphalt, Hot Asphalt, and Related Temporary Repair Work.

Following GWA's works described in Section 2.3 herein, GWA shall be responsible for the backfill and application of Cold Asphalt mix as temporary fill. GWA shall document the temporary repair

through a Task Order and provide the following information to DPW within forty-eight (48) hours of completion of the temporary repair:

1. GWA Work Order number and location information;
2. Photos or videos of the completed work along with any available GPS coordinates
3. Depth to repaired utility line;
4. Depth of sand bedding cover;
5. Depth and description of backfill, including manner of compaction;
6. Depth of cold mix, including manner of placement and compaction; and
7. Area and estimated volume of temporary repair.

2.5 Permanent Pavement Repair.

GWA may perform its own permanent repair only in accordance with DPW standards (Exhibit A) and upon 48-hours prior notice to DPW to allow DPW to inspect the repair work.

In the event GWA requests that permanent repairs be performed by DPW, its contractor or sub-contractor shall undertake and complete permanent repair in accordance with DPW standards as soon as practicable after receipt of GWA's information for each temporary repair. DPW shall provide a schedule of repair locations to GWA no less than twenty-four (24) hours prior to repair.

SECTION 3. TERM

3.1 Basic Term.

This MOA shall be for a basic term of five (5) years commencing on the effective date of this MOA and ending five (5) years later ("Basic Term"), or until said term is sooner terminated pursuant to any of the condition limitations or other provisions of this MOA. Notwithstanding any other language contained herein, either Party may terminate this MOA upon sixty (60) days prior notice to the other Party.

SECTION 4. PAYMENT

4.1 GWA shall be solely responsible for costs and expenses incurred by DPW in repairing or repaving of Guam's Paved Roads following GWA's excavation, restoration, installation or repair of utilities, for each GWA Task Order (TO) issued.

DPW's costs and expenses will be determined based on actual quantities for repair work and unit costs shown in Exhibit B, attached hereto.

4.2 DPW shall submit an invoice, signed by the Director of DPW to GWA for each permanent pavement repair within ten (10) working days of completion. Each invoice shall contain:

1. The date of performance;
2. The GWA TO number;
3. An itemized cost breakdown for repair work based on agreed-upon unit costs attached hereto as Exhibit B; and
4. A listing of labor and equipment hours.

4.3 GWA shall remit payment to DPW within thirty (30) days of verification and approval of DPW invoice.

- 4.4 No payment shall be made for any work not authorized by GWA through the issuance of a GWA Task Order signed by the GWA General Manager.

SECTION 5. INDEMNITY

- 5.1 GWA shall indemnify and save harmless DPW from and against any and all liability, loss, damages, expenses, costs of action, suits, interests, fines, penalties, claims and judgments, arising from injury, or claim of injury, during the term of this MOA to any person or property of any and every nature, and from any matter or thing, growing out of the occupation, possession, use, management, improvement, construction, alteration, repair, maintenance, or control of GWA equipment or facilities.
- 5.2 This indemnification does not apply to any activity or work performed by DPW or its contractors pursuant to this MOA that results in injury or damages to GWA, its employees or any third parties.

SECTION 6. GOVERNING LAW

- 6.1 This MOA shall be governed by and construed in accordance with the laws of Guam and with federal laws as made applicable to Guam, and the courts of Guam shall have jurisdiction over all disputes arising hereunder.

SECTION 7. MISCELLANEOUS PROVISIONS

- 7.1 Time is of the essence concerning the provisions of this MOA.
- 7.2 If any provision herein shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be deemed stricken and this MOA shall be enforced according to its valid and subsisting terms and provisions.
- 7.3 The failure of either party to insist upon strict compliance with any term, provision, or condition of this MOA shall not be construed as a waiver of either party's rights and remedies under this MOA.
- 7.4 Any approval required herein by either DPW or GWA shall mean that the approval of the Director/General Manager or Acting Director/Acting General Manager of the respective Agency or Authority is required, unless another person is designated to issue particular or limited approvals on certain matters.
- 7.5 Any and all changes or modifications to this MOA shall be negotiated between DPW and GWA and shall be set forth in a writing duly executed by authorized representatives of the Parties.
- 7.6 The Parties hereto warrant that no person in their employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry shall provide services on DPW property. If any employee of the Parties is providing services on DPW property and is convicted subsequent to this MOA, then the employing Party warrants that it will notify the other Party of the conviction within twenty-four (24) hours of

the conviction, and will remove immediately such convicted person from providing services on DPW property. If the Parties are found to be in violation of any of the provisions of this paragraph, then the violating Party shall take corrective action within twenty-four (24) hours' notice, and the violating Party shall notify the other Party when the corrective action has been taken.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed by their duly authorized officers effective on the date of the last signature below.

DEPARTMENT OF PUBLIC WORKS

GUAM WATERWORKS AUTHORITY

VINCENT P. ARRIOLA
Director

MIGUEL C. BORDALLO, P.E.
General Manager

Date: _____

Date: _____

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