

1 approval of the FOG control program manual, GWA shall develop and submit to the Guam
2 Legislature for approval pursuant to Guam's Administrative Adjudication Act a comprehensive
3 FOG control program to minimize the potential of SSOs caused by FOG that complies with 40
4 C.F.R. Part 403. GWA shall, as a compliance milestone, implement and enforce the Part 403-
5 compliant FOG control program approved by the Guam Legislature. Within 90 Days of the
6 Effective Date, as an interim milestone, GWA shall submit to EPA, for review and approval, a
7 FOG control program manual. The FOG control program shall meet the following requirements:
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9 a. A Food Service Establishment shall not discharge its wastewater into the
10 Wastewater Collection System without a GWA permit issued in accordance with Guam
11 Administrative Rules and Regulations ("GAR") Title 28 and the FOG control program manual;
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13 b. At a minimum, GWA shall conduct an annual inspection of each GRD at
14 each FSE to verify that a properly-sized GRD has been installed, is operating, and has been
15 maintained in compliance with GAR Title 28 and the FOG control program manual. GWA's
16 annual inspections shall include physical inspection, including coring, of the GRD and review of
17 both GRD maintenance and grease hauling logs;
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19 c. For any FSE or other GRD permittee that has failed to properly install,
20 operate, and maintain a GRD, the FOG control program shall include an enforcement response
21 plan; and
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23 d. For any FSE not served by a GRD, GWA shall require the FSE to obtain a
24 permit and install, operate, and maintain a properly-sized GRD that meets the requirements of
25 GAR Title 28 and the FOG control program manual.

26 E. APPROVAL OF DELIVERABLES/PERMITS

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

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

5 42. If the submission is approved pursuant to Paragraph 41, GWA shall take all
6 actions required by the plan, report, or other document, in accordance with the schedules and
7 requirements of the plan, report, or other document, as approved. If the submission is
8 conditionally approved or approved in part pursuant to Paragraph 41(b) or (c), GWA shall, upon
9 written direction from EPA, take all actions required by the approved plan, report, or other item
10 that EPA determines are technically severable from any disapproved portions, subject to GWA's
11 right to dispute only the specified conditions or the disapproved portions, under Section IX
12 (Dispute Resolution).
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15 43. If the submission is disapproved in whole or in part pursuant to Paragraph 41(c)
16 or (d), the GWA shall, within thirty (30) Days or such other time as the Parties agree to in
17 writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved
18 portion thereof, for approval, in accordance with the preceding Paragraphs. If the resubmission
19 is approved in whole or in part, GWA shall proceed in accordance with the preceding Paragraph.
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21 44. Any stipulated penalties applicable to the original submission, as provided in
22 Section VII (Stipulated Penalties), shall accrue during the 30-Day period or other specified
23 period, but shall not be payable unless the resubmission is untimely or is disapproved in whole or
24 in part; provided that, if the original submission was so deficient as to constitute a material
25 breach of GWA's obligations under this Decree, the stipulated penalties applicable to the original
26 submission shall be due and payable notwithstanding any subsequent resubmission.
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1 45. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in
2 whole or in part, EPA may again require the submitting Defendant to correct any deficiencies, in
3 accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject to
4 Defendant's right to invoke Dispute Resolution and the right of EPA to seek stipulated penalties
5 as provided in the preceding Paragraphs.

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

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

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

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

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17 b. A statement of the number of miles of Gravity Mains that GWA has
18 Rehabilitated and Replaced in the previous six months, in accordance with Paragraph 12.b. For
19 each Gravity Main Rehabilitated or Replaced, GWA shall provide the following information:
20 (1) the pipe identification number; (2) whether the pipe was Rehabilitated or Replaced; (3) the
21 length of the Gravity Main claimed as credit towards the mileage requirements and the length of
22 Rehabilitation or Replacement performed; (4) the pipe material; (5) the diameter of the pipe;
23 (6) the original installation date of the Gravity Main at issue; (7) the most recent condition
24 assessment of the Gravity Main prior to its Rehabilitation or Replacement; (8) a map depicting
25 the location of each Gravity Main Rehabilitated or Replaced; (9) the average annual rate of
26 Gravity Main Rehabilitation based on a two (2) year rolling average, the number of feet of
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1 Gravity Mains Rehabilitated, and the cumulative total feet of Gravity Main Rehabilitated since
2 the Effective Date; (10) the number of manholes associated with Rehabilitated Gravity Mains
3 and the number of manholes Rehabilitated; (11) the number of Laterals reconnected in
4 association with Gravity Main Rehabilitation and Replacement; (12) if GWA did not achieve its
5 Rehabilitation requirement in Paragraph 12.b, an explanation of why it did not achieve the
6 Rehabilitation requirement and a description of what changes to the work will be made in order
7 to correct the deficiency and achieve the Rehabilitation requirement in GWA's subsequent fiscal
8 years; (13) the Rehabilitation budget and dollars spent on Gravity Main Rehabilitation; (14) the
9 Gravity Main Rehabilitation projects targeted to be completed in GWA's next fiscal year; and
10 (15) an explanation of any revisions that were made to GWA's financial planning associated
11 with future Gravity Main Rehabilitation and Replacement projects.
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14 c. A list of all deliverables submitted to EPA and a description of the work
15 performed pursuant to all deliverables submitted to the United States and approved or
16 commented on by EPA, as well as a list of deliverables submitted to the United States but not yet
17 approved or commented on by EPA.
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19 d. The feet of Gravity Mains cleaned and percent of feet of Gravity Mains in
20 the Wastewater Collection System cleaned as part of the routine and hot spot cleaning programs
21 set forth in Paragraphs 34 and 35, reporting both unique footage and total footage (i.e., including
22 repeat cleanings) and the feet of Gravity Mains in the hot spot cleaning program and the range of
23 cleaning frequencies.
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25 e. A description of the activities to Repair, Rehabilitate, or Replace Acute
26 Defects pursuant to Paragraph 12.a, including the number of Acute Defects found; the number of
27 Acute Defects Repaired, Rehabilitated, and Replaced; and for Acute Defects that were not
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1 Repaired, Rehabilitated, or Replaced within 18 or 24 months from identification, as applicable,
2 an explanation of why they were not Repaired, Rehabilitated, or Replaced and description of the
3 actions or a schedule to Repair, Rehabilitate, or Replace the Acute Defect(s) as soon as possible.

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

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

3 h. Whenever any violation of this Consent Decree or any of the applicable
4 NPDES Permits or any other event affecting GWA's performance under this Consent Decree, or
5 the performance of its POTW, may pose an immediate threat to the public health or welfare or
6 the environment, GWA shall notify EPA orally and by e-mail as soon as possible, but no later
7 than 24 hours after GWA first knew of the violation or event. If the cause of a violation or event
8 cannot be fully explained at the time the report is due, GWA shall so state in the report. GWA
9 shall investigate the cause of the violation or event and shall then submit an amendment to the
10 report, including a full explanation of the cause of the violation or event, within thirty (30) Days
11 of the Day GWA becomes aware of the cause of the violation or event. Nothing in this
12 Paragraph relieves GWA of its obligation to provide the notice required by Section VIII (Force
13 Majeure).
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16 49. Annual Meeting. At a mutually agreeable date in March of each year after the
17 Effective Date, the Parties shall meet, either in person or via teleconference, to review GWA's
18 compliance with the requirements of the Consent Decree and to discuss the status of the work
19 being performed by GWA pursuant to the Decree and interim milestones and compliance
20 milestones set forth in the Decree. Two weeks before the scheduled annual meeting, GWA shall
21 provide EPA a proposed agenda addressing issues to be discussed.
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23 50. Each report submitted by GWA under this Section shall be signed by an official
24 of GWA and include the following certification:
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26 I certify under penalty of law that this document and all
27 attachments were prepared under my direction or supervision in
28 accordance with a system designed to assure that qualified
personnel properly gather and evaluate the information submitted.

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

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

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

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

17 **VII. STIPULATED PENALTIES**

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

24 54. Interim Effluent Limits. The following stipulated penalties shall accrue per
25 violation for each violation of an interim effluent limit or monitoring requirement established
26 pursuant to Paragraph 33 (a violation of a weekly or monthly average limit, or a monitoring
27 requirement, shall be considered a single violation):
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<u>Penalty Per Violation</u>	<u>Period of Noncompliance</u>
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\$500.....	Daily Maximum Limit or Monitoring Requirement
\$1,000	Weekly Average Limit
\$1,500	Monthly Average Limit

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

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

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

57. SSOs.

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

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

58. Compliance Milestones.

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

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

b. List of Compliance Milestones.

- (1) Failure to Repair, Rehabilitate, or Replace Acute Defects pursuant to Paragraph 12.a.
- (2) Failure to submit a Long-Term Gravity Main Plan pursuant to Paragraph 13.a.
- (2) Failure to complete Capacity Assurance Projects pursuant to Paragraph 15.
- (3) Failure to complete implementation of the Force Main Action Plan pursuant to Paragraph 21.
- (4) Failure to complete any Pump Station Priority Project pursuant to Paragraph 25, or failure to complete any Pump Station improvement work pursuant to Paragraph 30.
- (5) Failure to submit a feasibility study for secondary treatment upgrades to the Hagåtña WWTP pursuant to Paragraph 32.
- (6) Failure to implement an approved Industrial Pretreatment Program pursuant to Paragraph 39.
- (7) Failure to implement an approved FOG control program pursuant to Paragraph 40.

59. Interim Milestones.

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

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

b. List of Interim Milestones.

- (1) Failure to complete CCTV inspections, failure to assess CCTV inspections, or failure to submit a Gravity Main Condition Assessment Report pursuant to Paragraph 11.
- (2) Failure to submit a Gravity Main Work Plan pursuant to Paragraph 2.c.
- (3) Failure to submit a Capacity Evaluation Report pursuant to Paragraph 15.
- (4) Failure to submit a Capacity Assurance Report pursuant to Paragraph 16.
- (5) Failure to submit a Force Main inventory pursuant to Paragraph 17.
- (6) Failure to complete a Force Main condition assessment pursuant to Paragraph 18.
- (7) Failure to submit:
 - a Force Main Assessment Report pursuant to Paragraph 19;
 - a Force Main Action Plan pursuant to Paragraph 20;
 - a Force Main Spill Contingency Plan pursuant to Paragraph 22;
 - a Force Main O&M Program pursuant to Paragraph 23.
- (8) Failure to submit Pump Station Preliminary Work Plans pursuant to Paragraph 27.
- (9) Failure to submit Pump Station condition assessments pursuant to Paragraph 29.
- (10) Failure to clean 60 “unique miles” of Gravity Mains annually pursuant to Paragraph 34.
- (11) Failure to implement the Hot Spot Cleaning Program pursuant to Paragraph 35.

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

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

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

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

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

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

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

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

25 64. Stipulated penalties shall continue to accrue as provided in Paragraph 61, during
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1 any Dispute Resolution, but need not be paid until the following:

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

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

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

13 65. GWA shall pay stipulated penalties owing to the United States by FedWire
14 Electronic Funds Transfer ("EFT") to the DOJ account, in accordance with instructions provided
15 to GWA by the Financial Litigation Unit ("FLU") of the United States Attorney's Office for the
16 District of Guam after the Effective Date. The payment instructions provided by the FLU will
17 include a Consolidated Debt Collection System ("CDCS") number, which GWA shall use to
18 identify all payments required to be made in accordance with this Consent Decree. The FLU
19 will provide the payment instructions to:
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23 Taling M Taitano
24 Chief Financial Officer
25 Guam Waterworks Authority
26 Ste 200, Gloria B. Nelson Public Service Building
27 688 Route 15
28 Mangilao, Guam 96913
(671) 300-6860
tmtaitano@guamwaterworks.org

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

4 66. At the time of payment, GWA shall send notice that payment has been made: (i)
5 to EPA via email at cinwd_acctsreceivable@epa.gov or via regular mail at EPA Cincinnati
6 Finance Office, 26 W. Martin Luther King Drive, Cincinnati, Ohio 45268; and (ii) to DOJ via
7 email or regular mail in accordance with Section XIII; and (iii) to EPA in accordance with
8 Section XIII. Such notice shall state that the payment is for stipulated penalties owed pursuant to
9 the Consent Decree in *United States v. Guam Waterworks Authority and Government of Guam*,
10 shall state the violation(s) for which the penalties are being paid, and shall reference the civil
11 action number, CDCS Number and DOJ case number DJ 90-5-1-1-11696.
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14 67. If GWA fails to pay stipulated penalties according to the terms of this Consent
15 Decree, GWA shall be liable for interest on such penalties, as provided for in 28 U.S.C. § 1961,
16 accruing as of the date payment became due. Nothing in this Paragraph shall be construed to
17 limit the United States from seeking any remedy otherwise provided by law for GWA's failure to
18 pay any stipulated penalties.
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20 68. The payment of penalties and interest, if any, shall not alter in any way
21 Defendant's obligation to complete the performance of the requirements of this Consent Decree.
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23 69. Non-Exclusivity of Remedy. Stipulated penalties are not the United States'
24 exclusive remedy for violations of this Consent Decree. Subject to the provisions of Section XI
25 (Effect of Settlement/Reservation of Rights), the United States expressly reserves the right to
26 seek any other relief it deems appropriate for GWA's violation of this Decree or applicable law,
27 including but not limited to an action against Defendant(s) for statutory penalties, additional
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1 injunctive relief, mitigation or offset measures, and/or contempt. However, the amount of any
2 statutory penalty assessed for a violation of this Consent Decree shall be reduced by an amount
3 equal to the amount of any stipulated penalty assessed and paid pursuant to this Consent Decree.

4 **VIII. FORCE MAJEURE**

5 70. "Force majeure," for purposes of this Consent Decree, is defined as any event
6 arising from causes beyond the control of GWA, of any entity controlled by GWA, or of GWA's
7 contractors, that delays or prevents the performance of any obligation under this Consent Decree
8 despite best efforts of GWA to fulfill the obligation. The requirement that GWA exercise "best
9 efforts to fulfill the obligation" includes using best efforts to anticipate any reasonably
10 foreseeable potential force majeure event and best efforts to address the effects of any potential
11 force majeure event (a) as it is occurring and (b) following the potential force majeure, such that
12 the delay and any adverse effects of the delay are minimized to the maximum extent practicable.
13 "Force Majeure" does not include financial inability to perform any obligation under this
14 Consent Decree.
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17 71. If any event occurs or has occurred that falls within Section VIII (Force Majeure)
18 of this Consent Decree that may delay the performance of any obligation under this Consent
19 Decree, GWA shall provide notice orally or by electronic transmission to EPA and the United
20 States, within 72 hours or two (2) business days of when GWA first knew that the alleged force
21 majeure event might cause a delay, whichever period of time is longer. Within seven (7) Days
22 thereafter, GWA shall provide in writing to EPA an explanation and description of the reasons
23 for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or
24 minimize the delay; a schedule for implementation of any measures to be taken to prevent or
25 mitigate the delay or the effect of the delay; GWA's rationale for attributing such delay to a force
26 majeure event; and a statement as to whether, in the opinion of GWA, such event may cause or
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1 contribute to an endangerment to public health, welfare or the environment. EPA may, in its
2 unreviewable discretion, extend the time for the written explanation. GWA shall include with
3 any notice all available documentation supporting the claim that the delay was attributable to a
4 force majeure. Failure to comply with the above requirements shall preclude GWA from
5 asserting any claim of force majeure for that event for the period of time of such failure to
6 comply, and for any additional delay caused by such failure. GWA shall be deemed to know of
7 any circumstance of which GWA, any entity controlled by GWA, or GWA's contractors knew or
8 should have known.
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10 72. If EPA agrees that the delay or anticipated delay is attributable to a force majeure
11 event, the time for performance of the obligations under this Consent Decree that are affected by
12 the force majeure event will be extended by EPA for such time as is necessary to complete those
13 obligations. An extension of the time for performance of the obligations affected by the force
14 majeure event shall not, of itself, extend the time for performance of any other obligation. EPA
15 will notify GWA in writing of the length of the extension, if any, for performance of the
16 obligations affected by the force majeure event.
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19 73. If EPA does not agree that the delay or anticipated delay has been or will be
20 caused by a force majeure event, EPA will notify GWA in writing of its decision.

21 74. If GWA elects to invoke the dispute resolution procedures set forth in Section IX
22 (Dispute Resolution), it shall do so no later than fifteen (15) Days after receipt of EPA's notice.
23 In any such proceeding, GWA shall have the burden of demonstrating by a preponderance of the
24 evidence that the delay or anticipated delay has been or will be caused by a force majeure event,
25 that the duration of the delay or the extension sought was or will be warranted under the
26 circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and
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1 that GWA complied with the requirements of Paragraphs 71 and 72. If GWA carries this burden,
2 the delay at issue shall be deemed not to be a violation by GWA of the affected obligation of this
3 Consent Decree identified to EPA and the Court.

4 **IX. DISPUTE RESOLUTION**

5 75. Unless otherwise expressly provided for in this Consent Decree, the dispute
6 resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising
7 under or with respect to this Consent Decree. Defendants' failure to seek resolution of a dispute
8 under this Section shall preclude Defendants from raising any such issue as a defense to an
9 action by the United States to enforce any obligation of Defendants arising under this Decree.
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11 76. Informal Dispute Resolution. Any dispute subject to Dispute Resolution under
12 this Consent Decree shall first be the subject of informal negotiations. The dispute shall be
13 considered to have arisen when either Defendant sends the United States a written Notice of
14 Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal
15 negotiations shall not exceed twenty (20) Days from the date the dispute arises, unless that
16 period is modified by written agreement by the relevant Parties. If the relevant Parties cannot
17 resolve a dispute by informal negotiations, then the position advanced by the United States shall
18 be delivered in writing and considered binding unless, within thirty (30) Days after the
19 conclusion of the informal negotiation period, the notifying Defendant invokes formal dispute
20 resolution procedures as set forth below.
21
22

23 77. Formal Dispute Resolution. The notifying Defendant shall invoke formal dispute
24 resolution procedures, within the time period provided in the preceding Paragraph, by serving on
25 the United States a written Statement of Position regarding the matter in dispute. The notifying
26 Defendant's Statement of Position shall not raise any issue not raised in its Notice of Dispute
27 described in Paragraph 76. The Statement of Position shall include, but need not be limited to,
28

1 any factual data, analysis, or opinion supporting the Defendant's position and any supporting
2 documentation relied upon by the Defendant.

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

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

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

27 81. Standard of Review.
28

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

8
9 b. Other Disputes. Judicial review of all other disputes shall be governed by
10 applicable principles of law.

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

20 **X. INFORMATION COLLECTION AND RETENTION**

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

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

1 or its representatives, contractors, or consultants;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26
27 93. This Consent Decree is not a permit, or a modification of any permit, under any
28

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

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

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

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

23 **XII. COSTS**

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

28 **XIII. NOTICES**

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

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

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

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

11 As to EPA by email: ***

12 As to EPA by mail: Section Chief
13 Water Section
14 Enforcement Division (ENF -*.*)
15 U.S. Environmental Protection Agency, Region IX
16 75 Hawthorne Street
17 San Francisco, CA 94105

18 As to GWA: Theresa G. Rojas, Esq.
19 Legal Counsel
20 Guam Waterworks Authority
21 Ste. 200, Gloria B. Nelson Public Service Building
22 688 Route 15
23 Mangilao, Guam 96913
24 tgrojas@guamwaterworks.org

25 As to Government of Guam: Graham Botha
26 Deputy Attorney General
27 Office of the Attorney General of Guam
28 590 S. Marine Corps Drive, Ste. 801
Tamuning, Guam 96913
gbotha@oagguam.org

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

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

1 recipient or notice address provided above.

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

5 **XIV. EFFECTIVE DATE**

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

9 **XV. RETENTION OF JURISDICTION**

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

14 **XVI. MODIFICATION**

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

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

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

9
10 106. Any disputes concerning modification of this Decree shall be resolved pursuant to
11 Section IX (Dispute Resolution), provided, however, that, instead of the burden of proof
12 provided by Paragraph 81, the Party seeking the modification bears the burden of demonstrating
13 that it is entitled to the requested modification in accordance with Federal Rule of Civil
14 Procedure 60(b).
15

16 **XVII. TERMINATION**

17
18 107. After GWA has completed the requirements of Section V (Compliance
19 Requirements), has thereafter maintained continuous satisfactory compliance with this Consent
20 Decree for a period of not less than twelve (12) consecutive months, and has paid any accrued
21 stipulated penalties as required by this Consent Decree, GWA may serve upon the United States
22 a Request for Termination, stating that GWA has satisfied those requirements, together with all
23 necessary supporting documentation.
24

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

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

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

6 **XVIII. PUBLIC PARTICIPATION**

7
8 A. Consent Decree Lodging.

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

17
18 B. Public Outreach, Engagement, and Participation by GWA.

19 111. Fourteen (14) days prior to any public meeting held by the Guam's Consolidated
20 Commission on Utilities or Guam's Public Utilities Commission where projects required under
21 Section V (Compliance Requirements) of this Consent Decree may be discussed, GWA shall
22 post prominent notice on its website and social media pages of: (a) the time, date, and location of
23 the public meeting; (b) a list of the relevant meeting topics; and (c) a one (1) paragraph summary
24 of how the public may submit questions, comments, or concerns regarding the meeting topics to
25 GWA prior to the meeting. If any member of the public submits, at or before any such public
26 meeting, a comment regarding any of the projects required under Section V (Compliance
27
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1 Requirements) of this Consent Decree, GWA shall consider and respond to such comments (i)
2 orally at the public meeting; and (ii) in writing within thirty (30) days of the public meeting.

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

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

15
16 113. Nothing herein is intended to limit additional public outreach, engagement, or
17 participation by GWA, Guam's Consolidated Commission on Utilities, or Guam's Public
18 Utilities Commission.
19

20 **XIX. SIGNATORIES/SERVICE**

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

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

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

7 **XX. INTEGRATION**

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

16 **XXI. JUDGMENT**

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

22 **XXII. HEADINGS**

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


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

“Appendix A” is a list of pipe segments that are inaccessible for CCTV inspection; and

“Appendix B” is a map of the Sewer Capacity Assurance Projects, Route 1 – Dededo.

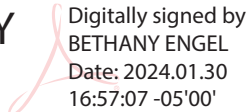
Dated and entered this 9th day of August, 2024


FRANCES M. TYDINGCO-GATEWOOD
CHIEF JUDGE

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

3 FOR THE UNITED STATES OF AMERICA:

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

8 **BETHANY**  Digitally signed by
9 **ENGEL** BETHANY ENGEL
Date: 2024.01.30
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9 Date _____
10 BETHANY ENGEL
11 KAYCI G. HINES
12 Environmental Enforcement Section
13 Environment and Natural Resources Division
14 U.S. Department of Justice
15 Washington, D.C. 20044-7611
16 Telephone: 202-514-6892

17 SHAWN N. ANDERSON
18 United States Attorney
19 Districts of Guam and the NMI

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

26
27
28

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

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

5 **SYLVIA QUAST**

Digitally signed by SYLVIA
QUAST
Date: 2023.10.31 12:07:32
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6 _____
7 Date

SYLVIA QUAST
Regional Counsel
U.S. Environmental Protection Agency, Region IX

9 OF COUNSEL:
10 JANET MAGNUSON
Assistant Regional Counsel
11 U.S. Environmental Protection Agency, Region IX
Office of Regional Counsel
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THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004.

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

JOSEPH
THEIS

Digitally signed by
JOSEPH THEIS
Date: 2023.12.08
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12/08/23

DATE

JOSEPH G. THEIS
Acting Director
Office of Civil Enforcement
Water Enforcement Division
U.S. Environmental Protection Agency

CHRISNA
BAPTISTA

Digitally signed by
CHRISNA BAPTISTA
Date: 2023.12.04
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12/4/23

DATE

CHRISNA BAPTISTA
Attorney Advisor
Office of Civil Enforcement
Water Enforcement Division
U.S. Environmental Protection Agency

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

FOR THE GUAM WATERWORKS AUTHORITY:



Date

MIGUEL C. BORDALLO, P.E.
General Manager

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

FOR THE GOVERNMENT OF GUAM:

Joseph A. Guzman

for

DOUGLAS B. MOYLAN
ATTORNEY GENERAL OF GUAM

10/23/23
Date

Date

LOU LEON GUERRERO
GOVERNOR OF GUAM

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

FOR THE GOVERNMENT OF GUAM:

Date

DOUGLAS B. MOYLAN
ATTORNEY GENERAL OF GUAM

10/24/23
Date

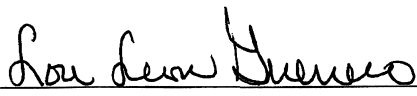

LOURDES A. LEON GUERRERO
GOVERNOR OF GUAM

Exhibit E

ATTACHMENT 1 TASK ORDER FORM

Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for
Islandwide Sewer Collection/Transmission System
Repair, Rehabilitation, and Replacement Project

Task Order No. [02], consisting of 5 pages.

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner: Guam Waterworks Authority
- c. Engineer: AECOM Technical Services, Inc.
- d. Specific Project (title): Capacity Assurance Projects, CCTV Inspections, Cleaning, Hydraulic Analysis, and Design
- e. Specific Project (description): Provide GWA with assessment and design services for gravity sewer in Barrigada, Dededo, and Yigo, and assessment and design services for Ypao and Mamajanao Pump Stations.

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:

SEE ATTACHED SCOPE OF WORK, ATTACHMENT A – September 20, 2024, AECOM, Task Order No. 2 Scope of Work and Fee Proposal.
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

Additional Services that may be authorized or necessary under this Task Order are set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," of the Agreement modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 and Exhibit B of the Agreement, under this Task Order, subject to the following: None

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A under this Task Order or elsewhere, the parties shall meet the following schedule:

Party	Action	Schedule
Engineer	Conduct and complete require CCTV inspections of Gravity Mains and provide data to Owner for submittal to USEPA.	By March 7, 2025
Engineer	Conduct meetings and Assist Owner with review and assessment of CCTV.	Within 30 days of completion of CCTV
Owner	Assist Engineer with requested data, as necessary.	Within 14 days of receipt from Engineer.
Owner	Submit any additional CCTV completed to Engineer, for assessment and reporting.	Within 14 days of receipt of additional CCTV data.
Engineer	Conduct and complete assessment of pump stations within scope.	Within 180 days of Effective Date of Task Order.
Engineer	Complete design of pump stations within scope.	Within 180 days of completion of assessment.

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order based on the attached approved Task Order No. 2 Scope of Work and Fee

Description of Service	Amount	Basis of Compensation
Task 1. Task Order Management	\$356,585.20	Lump Sum
Task 2. Barrigada, Route 10 Sewer & Manhole Inspection (Capacity Assurance Project)	\$138,815.88	Lump Sum
Task 3. Dededo, Route 1 Sewer & Manhole Inspection (Capacity Assurance Project)	\$498,808.87	Lump Sum
Task 4. Yigo & Dededo Sewer & Manhole Inspection (Acute Defects Project)	\$173,117.70	Lump Sum
Task 5. Gravity Main & Manhole Assessment & Report	\$451,167.77	Lump Sum
Task 17. Ypao Pump Station Assessment & Design	\$990,619.59	Lump Sum
Task 18. Mamajanao Pump Station Assessment & Design	\$988,459.16	Lump Sum
SUBTOTAL	\$3,597,574.17	
GRT (5.263%)	\$189,232.40	
Grand Total Task Order 2	\$3,786,806.57	

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

- B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C of the Agreement.

7. Consultants retained as of the Effective Date of the Task Order: Not Applicable

8. Other Modifications to Agreement and Exhibits:

- a. The following replaces and supersedes Agreement, Article 6, Paragraph 6.02.A:

For each design performed or furnished, Engineer shall be responsible for Design Services during Construction as well as all duties required in performance of the Engineer as the Construction/Project manager as defined in the Scope of Work and/or Task Order. Engineer, as both designer and Construction/Project Manager, shall be responsible for design and Shop Drawing review, review and response to Requests for Information and Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services.

- b. The following replaces and supersedes Agreement, Article 7, Paragraph 7.01.A.15

Construction Management – Represent the owner's interest and provide technical expertise in the oversight of the project, directly for the owner. Primary duties shall be to observe and monitor contractor activities at a construction site to meet a project's goals, plans, specifications, schedule, and safety standards as defined in the Task Order.

9. Attachments: ATTACHMENT A – September 20, 2024, AECOM, Task Order No. 2 Scope of Work and Fee Proposal.

10. Other Documents Incorporated by Reference: Not Applicable

11. Terms and Conditions

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is []

OWNER: Guam Waterworks Authority

ENGINEER:

By: _____

By: _____

Print Name: MIGUEL C. BORDALLO, P.E.

Print Name: _____

Title: General Manager

Title: _____

Engineer License or Firm's
Certificate No. (if required): _____
State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail Address: _____

Email Address: _____

Phone: _____

Phone: _____

Engineering Department Approval:

By: _____

BRETT RAILEY, P.E.
GWA Acting Asst. General Manager - Engineering

Certified Funds Available:

Approved as to Form:

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

By: _____
THERESA G. ROJAS, ESQ.
GWA Legal Counsel

Contract Amount: \$ 3,786,806.57

Contingency: \$ _____

Amount Certified: \$ 3,786,806.57

Funding Source: Bond, IFICIP



AECOM
414 W. Soledad Ave.
Suite 708
Hagåtña, GU 96910
www.aecom.com

671-477-8326/7 tel
671-472-8324 fax

September 20, 2024

Brett Railey, P.E., Acting Assistant General Manager
Guam Waterworks Authority
Engineering Division, Room 202
Gloria B. Nelson Public Service Building
688 Route 15, Mangilao, GU 96913

Attention: George Watson

Subject: Scope of Work and Fee Proposal for Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Island wide Sewer Collection/Transmission System Repair, Rehabilitation and Replacement, Project No S 22-02 BND; Task Order No. 02 Capacity Assurance Projects, CCTV Inspections, Cleaning, Hydraulic Analysis, and Design.

Håfa Adai,

Following our Scope of Work and Fee Proposal review meeting on September 05, 2024, and additional direction provided through email correspondence on September 10, 2024, we have refined our Scope of Work and Fee for your review and consideration. Once we receive your concurrence with the proposed adjustments, we will provide an Amended Proposal. The amended proposal will include the Scope of Work, Fee Detail, Preliminary Schedule, and Subconsultant Fee Proposals as a single package.

The fee reflects the scope of work required to meet the compliance requirements of the Capacity Assurance projects outlined in the Partial Consent Decree. The scope of work will address sanitary sewer overflows, infiltration, inflow, and collection system capacity issues. The tasks covered under this task order are as follows:

- Task 01 – Task Order Management
- Task 02 – Mangilao Route 10 Sewer Mainline & Manhole Inspection (Capacity Assurance Project, 0.75mi)
- Task 03 – Northern District Route 1 Sewer Mainline & Manhole Inspection (Capacity Assurance Project, 3.94mi)
- Task 04 – Yigo & Dededo Sewer Mainline & Manhole Inspection (Acute Defects Project, 1.70mi)
- Task 05 – Gravity Main & Manhole Assessments & Report
- Task 06 – Flow Monitoring Support (T&M)
- Task 07 – Gravity Main Repair, Rehabilitation, & Replacement Program - Work Plan (T&M)
- Task 08 – Gravity Main Repair, Rehabilitation, & Replacement Program - Annual Evaluation Support (T&M)
- Task 09 – Long-Term Gravity Plan Support (T&M)
- Task 10 – Capacity Evaluation Support (T&M)
- Task 11 – Mangilao Route 10 Design (Capacity Assurance Project)



- Task 12 – Northern District Route 1 Design (Capacity Assurance Project)
- Task 13 – Yigo & Dededo Design (Acute Defect Projects)
- Task 14 – Capacity Assurance Flow Model Support (T&M)
- Task 15 – Barrigada Force Main Assessment & Design (Non-Priority Project)
- Task 16 – Barrigada Pump Station Assessment & Design (Non-Priority Project)
- Task 17 – Ypao Pump Station Assessment & Design (Pump Station Priority Project)
- Task 18 – Mamajanao Pump Station Assessment & Design (Pump Station Priority Project)

Seven (7) projects were defined as part of this task order and their limits are as follows:

- Project 01 – Route 10 from Mangilao Mains to Barrigada Pump Station (Capacity Assurance Project, 0.75mi)
- Project 02 – Barrigada Pump Station Assessment & Design (Capacity Assurance Project)
- Project 03 – Barrigada Force Main Assessment & Design (Capacity Assurance Project)
- Project 04 – Northern District Route 1 Capacity Replacement Phase I, II, III (Capacity Assurance Project, 3.94 mi)
- Project 05 – Yigo & Dededo NASSCO Rating #5 (Acute Defect Projects, 1.70 mi)
- Project 06 – Ypao Pump Station Assessment & Design (Pump Station Priority Project)
- Project 07 – Mamajanao Pump Station Assessment & Design (Pump Station Priority Project)

The amended fee estimate prepared as requested by GWA which includes a total cost for “Base Services” and “Optional Services” are as follows:

- Assuming **Base Service** improvements of the collection system and **Optional Services** within the project limits require 100% replacement, the services fee estimate is **\$3,786,806.57** and **\$6,949,312.60**, respectively as shown in the attached Table.

Based on negotiation meetings and email correspondence between GWA and AECOM on September 05, 2024, and September 10, 2024, the following are the assumptions used refine our Scope of Work and Fee for the Base Services:

- **Task 01 - Task Order Management**
 - Previously, task order management for Task Order #02 was adjusted to cover twelve consecutive months of services. It has now been adjusted to include the anticipated three (3) year duration of the work that would include Tasks 11, 12, and 13.
- **Tasks 02, 03, & 04 - Sewer Mainline & Manhole Inspections**
 - 2.1.2, 3.1.2, 4.1.2 (Work Plan): This effort has been consolidated, assuming a single Work Plan will be prepared for providing Sewer Mainline and Manhole Inspection services for Projects 01, 04, and 05. These projects will be awarded concurrently and executed consecutively.
 - 2.1.4, 3.1.4, 4.1.4 (Field Investigations & Support): These services have been consolidated to the Engineer III position (lower rate), and the support has been adjusted to align with anticipated fieldwork durations provided by USI. The effort was also redistributed equally based



on the linear feet of pipeline being inspected for each project. This assumes that Tasks 02, 03, and 04 will be awarded concurrently and executed consecutively.

- 2.2.2, 3.2.2, 4.2.2 (Underground Services Inc.): These services were previously carried as a stand-alone fee item (2.2.2) with the assumption that the services would be provided independently of the execution of Tasks 3.2.2 and 4.2.2. USI's mobilization and demobilization services have now been distributed among all three (3) tasks, assuming Tasks 02, 03, and 04 will be awarded concurrently and executed consecutively. This is also why the delta for Task 02 is much larger than for Tasks 03 and 04.
- **Task 05 - Gravity Main & Manhole Assessment & Report**
 - The effort for this task has been reduced by 10% to accommodate current funding and budget limitations.
- **Tasks 17 & 18 Pump Station Assessment & Design (Pump Station Priority Project)**
 - These services assume consolidation of the preliminary design, design, bid support and construction support to include the scope for both Ypao and Mamajanao Pump Stations are to be awarded concurrently and executed as a single project.

Based on negotiation meetings and email correspondence between GWA and AECOM on September 5, 2024, and September 10, 2024, the following are the assumptions used refine our Scope of Work and Fee for the Optional Services:

- **Task 06 - Flow Monitoring (T&M)**
 - No change. These services will be provided on a time and materials basis.
- **Task 07 - Gravity Main Repair, Rehabilitation, & Replacement Program Work Plan (T&M)**
 - This Task has been moved from the "Base Services" to the "Optional Services" as a Work Plan will not be needed to proceed with design of the Capacity Assurance projects. These services are related to scheduling Acute Defect, Short-Term Gravity Main Repair, and Rehabilitation and Replacement work for the next five (5) years based on a prioritization list of the entire collection system. These services will be provided on a time and materials basis.
- **Task 08 - Gravity Main Repair, Rehabilitation, & Replacement Program - Annual Evaluation Support (T&M)**
 - No change. These services will be provided on a time and materials basis.
- **Task 09 - Long-Term Gravity Plan Support (T&M)**
 - No change. These services will be provided on a time and materials basis.
- **Task 10 - Capacity Evaluation Support (T&M)**
 - No change. These services will be provided on a time and materials basis.
- **Tasks 11 & 12 - Mangilao Route 10 and Northern District Route 1 Design (Capacity Assurance Project)**
 - The effort for Tasks 11 and 12 assumes consolidation of the preliminary design, design, bid support and construction support for both the Mangilao Route 10 and Northern District Route 1 as a single project to be awarded and executed concurrently.
- **Task 13 - Yigo & Dededo Design (Acute Defect Projects)**



- There is no change in the SOW or Fee for Task 13 at this time as it is an Acute Defects project subject to CCTV and assessment to confirm what level of repair, rehabilitation, or replacement is required.
- **Task 14 - Capacity Assurance Flow Model Support (T&M)**
 - No change. These services will be provided on a time and materials basis.
- **Task 15 - Barrigada Force Main Assessment & Design (Non-Priority Project)**
 - The effort for this task has been reduced by 2.57% to accommodate current funding and budget limitations.
- **Task 16 - Barrigada Pump Station Assessment & Design (Non-Priority Project)**
 - The effort for this task has been reduced by 1.41% to accommodate current funding and budget limitations.

We appreciate the opportunity and look forward to working with the Guam Waterworks Authority on this very important project. If you have any questions regarding this amended fee proposal summary, please call me at (808) 529-7219 or Bryan Ryley at (671) 477-8326.

Sincerely,

A handwritten signature in black ink, appearing to read 'Martin Nakasone', is positioned above the typed name.

Martin Nakasone
Vice President
Area Manager,
Hawaii-Pacific Islands
martin.nakasone@aecom.com

Enclosures: Appendix A: Table 1: Fee Summary (100% Replacement)



APPENDIX A: Table 1: Fee Summary (100% Replacement)

**Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management
for Island wide Sewer Collection/Transmission System Repair, Rehabilitation and Replacement
Project No S 22-02 BND**

Task Order No. 02 Capacity Assurance Projects, CCTV Inspections, Cleaning, Hydraulic Analysis, and Design

**Table 1: Fee Summary (100% Replacement)
09/20/24**

Table 1: Fee Summary (100% Replacement)

Task No.	Task Name	Fee 09/03/24	Amended Fee 09/20/24	Delta	Delta %
	Base Services				
1	Task Order Management	\$356,585.20	\$356,585.20	\$0.00	0.00%
2	Mangilao Route 10 Sewer Mainline & Manhole Inspection (Capacity Assurance Project)- CCTV	\$196,355.08	\$138,815.88	-\$57,539.20	-29.30%
3	Northern District Route 1 Sewer Mainline & Manhole Inspection (Capacity Assurance Project) - CCTV	\$485,075.87	\$498,808.87	\$13,733.00	2.83%
4	Yigo & Dededo Sewer Mainline & Manhole Inspection (Acute Defects Project) - CCTV	\$165,036.96	\$173,117.70	\$8,080.74	4.90%
5	Gravity Main & Manhole Assessments & Report	\$501,316.61	\$451,167.77	-\$50,148.84	-10.00%
17	Ypao Pump Station Assessment & Design (Pump Station Priority Project)	\$1,026,373.86	\$990,619.59	-\$35,754.27	-3.48%
18	Mamajanao Pump Station Assessment & Design (Pump Station Priority Project)	\$1,076,057.23	\$988,459.16	-\$87,598.07	-8.14%
	GRT (5.26%)	\$200,237.72	\$189,232.40	-\$11,005.32	-5.50%
	Total	\$4,007,038.53	\$3,786,806.57	-\$220,231.96	-5.50%
	Optional Services				
6	Flow Monitoring Support (T&M)	\$23,750.71	\$23,750.71	\$0.00	0.00%
7	Gravity Main Repair, Rehabilitation, & Replacement Program - Work Plan (T&M)	\$245,049.59	\$23,750.71	-\$221,298.88	-90.31%
8	Gravity Main Repair, Rehabilitation, & Replacement Program - Annual Evaluation Support (T&M)	\$23,750.71	\$23,750.71	\$0.00	0.00%
9	Long-Term Gravity Plan Support (T&M)	\$23,750.71	\$23,750.71	\$0.00	0.00%
10	Capacity Evaluation Support (T&M)	\$47,501.43	\$47,501.43	\$0.00	0.00%
11	Mangilao Route 10 Design (Capacity Assurance Project)	\$819,427.41	\$2,860,629.62	-\$165,036.18	-5.45%
12	Northern District Route 1 Design (Capacity Assurance Project)	\$2,206,238.39			
13	Yigo & Dededo Design (Acute Defect Projects)	\$1,557,156.84	\$1,557,156.84	\$0.00	0.00%
14	Capacity Assurance Flow Model Support (T&M)	\$23,750.71	\$23,750.71	\$0.00	0.00%
15	Barrigada Force Main Assessment & Design (Force Main Non-Priority Project)	\$1,054,729.33	\$1,027,668.64	-\$27,060.69	-2.57%
16	Barrigada Pump Station Assessment & Design (Pump Station Non-Priority Project)	\$1,004,522.10	\$990,334.95	-\$14,187.15	-1.41%
	GRT (5.26%)	\$369,758.43	\$347,267.57	-\$22,490.86	-6.08%
	Total	\$7,399,386.36	\$6,949,312.60	-\$450,073.76	-6.08%

Exhibit F

This is **EXHIBIT K**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated June 26, 2024.

Amendment to Owner-Engineer Agreement No. 1

1. Background Data:

- a. Effective Date of Task Order: June 26, 2024
- b. Owner: Guam Waterworks Authority
- c. Engineer: AECOM Technical Services, Inc.
- d. Specific Project: Indefinite Delivery/Indefinite Quantity (IDIQ) for Professional Project/Construction Management for Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement

2. Nature of Amendment

This Amendment No. 1 to the IDIQ for Professional Project/Construction Management for Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Owner-Engineer Agreement (“IDIQ”) contract will increase the contract amount by \$4,035,054.17 to allow for the execution of Change Order No. 1 for the Task Order No. 1, and the partial execution of Task Order No. 2. The total contract amount is, therefore, \$5,035,054.17 through this Amendment No.1 to the IDIQ Owner-Engineer Agreement.

Change Order No. 1 for Task Order No. 1 of the IDIQ includes additional Construction Management services to support the additional design scope for the Designer. The scope for Change Order No. 1 includes additional constructability review and construction phase services for the added design scope. The added design included replacement of the force main from Bayside Pump Station, erosion control and stabilization of the service road to the pump station, additional upsizing of gravity sewer lines, design of telecommunication conduits from the pump station, and manhole rehabilitation.

Task Order No. 2 of this IDIQ includes the condition assessment and design of gravity sewer, potential force mains, and pump stations in Barrigada, Tamuning, Tumon, Dededo, and Yigo. Task Order No. 2 is necessary to address Consent Decree requirements. Initially, only the condition assessment (including CCTV/cleaning) and preliminary engineering tasks for the sewer main lines, and the assessment and design of Ypao and Mamajanao pump stations tasks of Task Order No. 2 will be executed for an amount of \$3,786,806.57.

An additional amendment will be necessary to execute the design, bid support services, and engineering support services tasks of Task Order No. 2. Actual amount of these remaining tasks of Task Order No. 2 will be renegotiated after further defining the design scope through the initial execution of this task order.

Exhibit K – Amendment to Task Order

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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Page 1

3. Task Order Summary (Reference only)

Through this Amendment No. 1 to the IDIQ Owner-Engineer Agreement, this contract includes the following Task Orders:

1. Task Order No. 1 – Construction Management Service for Dungca Beach Sewer Line Relocation, Phase 1 Project.
2. Task Order No. 2 – Capacity Assurance Projects, CCTV Inspections, Cleaning, Hydraulic Analysis, and Design. Areas include Barrigada, Dededo, Yigo sewer main lines, and Ypao and Mamajanao Pump stations.

Summary of Task Orders and Cost

<u>Task Order</u>	<u>Contract Document</u>	<u>Amount</u>
Task Order No. 1	Original Task Order	\$938,097.04
	Change Order No. 1 (Amendment No. 1)	\$310,150.56
Task Order No. 2	Original Task Order	\$3,786,806.57
IDIQ Owner-Engineer Contracted Amount		\$5,035,054.17

4. Agreement Summary

IDIQ Contract Amount	
Original Agreement Contract Amount	\$1,000,000.00
Amendment No. 1 Net Increase	\$4,035,054.17
Revised Agreement Contract Amount Through Amendment No. 1	\$5,035,054.17

The foregoing Task Order Summary is for reference only and does not alter the terms of the Task Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Task Order as set forth in this Amendment. All provisions of the Agreement and Task Order not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is XXXXX.

OWNER:	ENGINEER:
By: _____	By: _____
Title: _____	Title: _____
Date Signed: _____	Date Signed: _____



Issues for Decision

Resolution No. 06-FY2025

Relative to Approval of Amendment for the Indefinite Delivery/Indefinite Quantity Professional Project/Construction Management Services Contract for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project for Brown and Caldwell.

What is the project's objective and is it necessary and urgent?

On August 9, 2024, GWA entered into a Partial Consent Decree (PCD) with USEPA under the Clean Water Act (CWA). To meet the time-sensitive requirements of the PCD, GWA has negotiated with Brown and Caldwell (BC) to perform assessments of sewer main lines (SML), force mains (FM), and pump stations (PS) in high-priority areas across the southern half of the island, along with preliminary design work.

These projects are necessary and urgent to enhance the sewer collection and transmission system, safeguard human and environmental health, and ensure compliance with the deadlines established in the PCD.

This resolution seeks to amend the contract awarded under RFP-06-ENG-2022 for the Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement. The contract was awarded to Brown and Caldwell on July 12, 2024. This RFP was a multiple-award procurement, and BC was one of two firms selected to provide services under the contract.

At the time of the award, the total contract value for Task Order No. 1 was below \$1 million, and therefore, it did not require CCU approval. However, GWA management is now seeking CCU approval for Amendment No. 1, which introduces Task Order No. 2. The additional task order increases the overall contract value to over \$1 million, triggering the requirement for CCU approval.

Task Order No. 2 introduces new key projects required under the PCD. These projects include:

- Agat - Assessment and preliminary design for Capacity Assurance Projects and addressing Acute Defects, including approximately 6,334 linear feet (1.20 miles) of gravity sewer lines.
- Santa Rita - Assessment and preliminary design for Capacity Assurance Projects and addressing Acute Defects, including approximately 3,222 linear feet (0.61 miles) of gravity sewer lines.
- Merizo - Assessment and preliminary design for Capacity Assurance Projects and addressing Acute Defects, including approximately 15,032 linear feet (2.85 miles) of gravity sewer lines and approximately 4,087 linear feet (0.77 miles) of 6" force main lines.
- Pump Stations 16 and 17, and Ejector Stations 3 and 6, and their associated force mains, will undergo assessment and preliminary design as required by the PCD.

Where is the location?

Project sites will be located throughout southern Guam. The Capacity Assurance and Acute Defect Projects for GWA's gravity lines will be located in the villages of Agat, Santa Rita and Merizo. Additionally, the Condition Assessment and Design Projects for Pump Stations 16 and 17, and Ejector Stations 3 and 6, and their associated force mains will be located in the villages of Tumon and Tamuning.

How much will it cost?

The initial contract award for the Owner-Engineer IDIQ agreement (Task Order No. 1) was One Million Dollars (\$1,000,000.00). The negotiated cost for Task Order No. 2 is Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars (\$3,962,362.00).

To execute Task Order No. 2, Amendment No. 1 to the Owner-Engineer IDIQ contract is required, increasing the maximum contract amount by Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars (\$3,962,362.00), bringing the new total contract value to Four Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars (\$4,962,362.00).

When will it be completed?

The completion of these projects will depend on site-specific conditions including, the severity of repairs, extent of sewer transmission system replacement, environmental conditions, and permitting requirements, and available funding. The estimated completion time for these projects is two years.

What is the funding source?

The funding for this project is available through bonds identified on GWA's Capital Improvements Plan, grants, and internally funded capital improvement program (IFCIP) funds.

The RFP/BID responses (if applicable):

Six proposals were received in response to RFP-06-ENG-2022. After evaluation, four proposals were considered, and the CIP Wastewater Division requested to award two Indefinite Delivery/Indefinite Quantity (ID/IQ) contracts to meet the project needs.



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. 06-FY2025

RELATIVE TO APPROVAL OF AMENDMENT FOR THE INDEFINITE DELIVERY/INDEFINITE QUANTITY PROFESSIONAL PROJECT/CONSTRUCTION MANAGEMENT SERVICES CONTRACT FOR ISLANDWIDE SEWER COLLECTION/TRANSMISSION SYSTEM REPAIR, REHABILITATION, AND REPLACEMENT PROJECT FOR BROWN AND CALDWELL

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 awarded an Indefinite Delivery – Indefinite Quantity (IDIQ) contract agreement to Brown and Caldwell (B&C) for Project Management/Construction Management services for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project (See Exhibit A); and

WHEREAS, as part of the IDIQ contract, GWA awarded B&C Task Order No. 1 the Tamuning/Tumon Hot Spots Project Management/Construction Management services, NASSCO Training, and Design-Build IDIQ Contract Support (See Exhibit B) in the amount of Nine Hundred Eighty-Nine Thousand Five Hundred Thirty-Two Dollars (\$989,532.00); and

WHEREAS, United States Environmental Protection Agency (USPEA) grant funds cover the cost of Task Order No. 1; and

WHEREAS, GWA, entered into a Partial Consent Decree (PCD) with the USEPA under the Clean Water Act (CWA) in US District Court of Guam Civil Action No., CV 24-00004, which became effective on August 9, 2024 (See Exhibit C); and

//

1 **WHEREAS**, to meet time sensitive requirements of the PCD, GWA negotiated
2 additional work with B&C for sewer main line (SML) and force main (FM) assessment and
3 preliminary design in high-priority areas in the southern half of the island, as well as pump
4 station (PS) assessment and complete design for high-priority PS 16 and 17, and Ejector Stations
5 (ES) 3 and 6; and

6
7 **WHEREAS**, GWA negotiated with B&C to conduct assessments and preliminary
8 designs for Capacity Assurance Projects in Agat, Santa Rita, and Merizo, as well as to address
9 Acute Defects, as required by the PCD (sections V.A.15 and V.A.12.a) and outlined in the 2018
10 Water Resource Master Plan (WRMP), Volume 3, Section 11; and

11
12 **WHEREAS**, GWA also negotiated with B&C to conduct assessment and preliminary
13 design on PS 16 and PS 17, and ES 3 and 6 in Merizo, and their associated FMs as required by
14 the PCD in section V.A.26; and

15
16 **WHEREAS**, the negotiated work under the PCD will be consolidated into Task Order
17 No. 2 for a total amount of Three Million Nine Hundred Sixty-Two Thousand Three Hundred
18 Sixty-Two Dollars (\$3,962,362.00) (See Exhibit D); and

19
20 **WHEREAS**, GWA management seeks CCU approval for Amendment No. 1 to the
21 Owner-Engineer Agreement (See Exhibit E) under the IDIQ contract to introduce a new Task
22 Order No. 2 with B&C, and to increase funding accordingly to complete the work as outlined
23 above; and

24
25 **WHEREAS**, the total currently approved IDIQ contract agreement amount is One
26 Million Dollars (\$1,000,000.00); and

27
28 **WHEREAS**, to execute Amendment No. 1 to implement Task Order No. 2, an
29 amendment to the Owner-Engineer IDIQ contract is required to increase the maximum contract
30 amount by Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars
31 (\$3,962,362.00); and

32 //

1 **WHEREAS**, GWA management seeks CCU approval to increase the total IDIQ contract
2 amount by Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars
3 (\$3,962,362.00), bringing the new total contract value to Four Million Nine Hundred Sixty-Two
4 Thousand Three Hundred Sixty-Two Dollars (\$4,962,362.00) to execute Task Order No. 2; and

5
6 **WHEREAS**, funding for each Task Order will be sourced from grants, bonds, or IFCIP
7 funds.

8
9 **NOW BE IT THEREFORE RESOLVED**, that the Consolidated Commission on
10 Utilities does hereby approve the following:

- 11 1. The recitals set forth above hereby constitute the findings of the CCU.
- 12 2. The CCU finds that Task Order No. 2 is necessary for helping GWA meet the
13 requirements of the Partial Consent Decree.
- 14 3. The CCU hereby approves the funding to add Task Order No. 2 for assessment
15 and design work necessary for the Partial Consent Decree in the amount of Three
16 Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars
17 (\$3,962,362.00).
- 18 4. The CCU hereby approves the total funding authorization for the IDIQ contract
19 with B&C to a total amount of Four Million Nine Hundred Sixty-Two Thousand
20 Three Hundred Sixty-Two Dollars (\$4,962,362.00).
- 21 5. The CCU hereby further approves the use of Grant, Bond, or IFCIP funds to fund
22 the IDIQ contract, Amendment No. 1.
- 23 6. GWA management is hereby authorized to seek PUC approval, if required, for
24 Amendment No. 1 to the Owner-Engineer IDIQ Contract as the funding sources
25 will include bond funding exceeding One Million Dollars (\$1,000,000.00).

26
27 **RESOLVED**, that the Chairman certified and the Board Secretary attests to the adoption
28 of this Resolution.

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DULY AND REGULARLY ADOPTED, this 22nd day of October 2024.

Certified by: _____ Attested by: _____

JOSEPH T. DUENAS

Chairperson

PEDRO ROY MARTINEZ

Secretary

SECRETARY’S CERTIFICATE

I, Pedro Roy Martinez, Board Secretary of the Consolidated Commission on Utilities as evidenced by my signature above do hereby certify as follows:

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

AYES: _____

NAYS: _____

ABSENT: _____

ABSTAIN: _____

///

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///

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Exhibit A

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

EJCDC® E-505, Agreement Between Owner and Engineer for Professional Services – Task Order Edition.
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TABLE OF CONTENTS

	Page
ARTICLE 1 – SERVICES OF ENGINEER	1
1.01 Scope.....	1
1.02 Task Order Procedure.....	2
ARTICLE 2 – OWNER’S RESPONSIBILITIES	2
2.01 General.....	2
ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES	2
3.01 Term.....	2
3.02 Times for Rendering Services.....	3
ARTICLE 4 – INVOICES AND PAYMENTS	3
4.01 Invoices.....	3
4.02 Payments.....	3
ARTICLE 5 – OPINIONS OF COST	4
5.01 Opinions of Probable Construction Cost.....	4
5.02 Designing to Construction Cost Limit.....	4
5.03 Opinions of Total Project Costs.....	4
ARTICLE 6 – GENERAL CONSIDERATIONS	4
6.01 Standards of Performance.....	4
6.02 Design Without Construction Phase Services.....	6
6.03 Use of Documents.....	7
6.04 Electronic Transmittals.....	7
6.05 Insurance.....	8
6.06 Suspension and Termination.....	8
6.07 Controlling Law.....	10
6.08 Successors, Assigns, and Beneficiaries.....	10
6.09 Dispute Resolution.....	11
6.10 Environmental Condition of Site.....	11
6.11 Indemnification and Mutual Waiver.....	12
6.12 Records Retention.....	12
6.13 Miscellaneous Provisions.....	13
ARTICLE 7 – DEFINITIONS	13
7.01 Defined Terms.....	13
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS	17
8.01 Suggested Form of Task Order.....	17
8.02 Exhibits Included:.....	18
8.03 Total Agreement.....	18
8.04 Designated Representatives.....	19
8.05 Engineer’s Certifications.....	19

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR PROFESSIONAL SERVICES**

TASK ORDER EDITION

**Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction
Management for Islandwide Sewer Collection/Transmission System
Repair, Rehabilitation, and Replacement Project
Project No. S22-02-BND**

THIS IS AN AGREEMENT effective as of 7/12/24 ("Effective Date of the Agreement") between
Guam Waterworks Authority ("Owner") and
Brown and Caldwell ("Engineer").

Other terms used in this Agreement are defined in Article 7.

From time to time Owner may request that Engineer provide professional services for Specific Projects. related to Owner's Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project, Project No. S22-02-BND. Each engagement will be documented by a Task Order. This Agreement sets forth the general terms and conditions which shall apply to all Task Orders duly executed under this Agreement.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. The services to be provided or furnished by Engineer under this contract shall be to provide design, construction management, and project management services for sewer collection/transmission system projects in accordance with duly executed Task Orders.

Owner will compensate Engineer for services provided under this contract at rates in accordance with duly executed Task Orders.

The Fee Proposal for Task Order #1 is ATTACHED AS APPENDIX A

Unless specified in a task order or amendment, the total budgeted amount will be a not to exceed maximum amount and compensation will be on a time and materials basis for completed work.

- B. Engineer's services will be detailed in a duly executed Task Order for each Specific Project. The general format of a Task Order is shown in Attachment 1 to this Agreement. Each Task Order will indicate the specific services to be performed and deliverables to be provided.
- C. This Agreement is not a commitment by Owner to Engineer to issue any Task Orders.

- D. Engineer shall not be obligated to perform any prospective Task Order unless and until Owner and Engineer agree as to the particulars of the Specific Project, including the scope of Engineer's services, time for performance, Engineer's compensation, and all other appropriate matters.

1.02 *Task Order Procedure*

- A. Owner and Engineer shall agree on the scope, time for performance, and basis of compensation for each Task Order. With respect to the scope of Engineer's services, each specific Task Order shall either (1) be accompanied by and incorporate a customized Exhibit A, "Engineer's Services for Task Order," prepared for the Specific Project, (2) state the scope of services in the Task Order document itself, or (3) incorporate by reference all or portions of Exhibit A, "Engineer's Services for Task Order," as attached to this Agreement. Each duly executed Task Order shall be subject to the terms and conditions of this Agreement.
- B. Engineer will commence performance as set forth in the Task Order.
- C. Engineer shall provide, or cause to be provided, the services set forth in the Task Order.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth in this Agreement; in Exhibit B, "Owner's Responsibilities"; and in each Task Order.
- B. Owner shall pay Engineer as set forth in each Task Order, pursuant to the applicable terms of Article 4 and Exhibit C.
- C. Owner shall be responsible for all requirements and instructions that it furnishes to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement; such responsibility extends to requirements, instructions, programs, reports, data, and other information furnished by Owner pursuant to any Task Order. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- D. Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of: (1) any development that affects the scope or time of performance of Engineer's services; (2) the presence at the Site of any Constituent of Concern; or (3) any relevant, material defect or nonconformance in Engineer's services, the Work, the performance of any Constructor, or in Owner's performance of its responsibilities under this Agreement.

ARTICLE 3 – TERM; TIMES FOR RENDERING SERVICES

3.01 *Term*

- A. This Agreement shall be effective and applicable to Task Orders issued hereunder for 5 years from the Effective Date of the Agreement.
- B. The parties may extend or renew this Agreement, with or without changes, by written instrument establishing a new term.

3.02 *Times for Rendering Services*

- A. The Effective Date of the Task Order and the times for completing services or providing deliverables will be stated in each Task Order. Engineer is authorized to begin rendering services under a Task Order as of the Effective Date of the Task Order.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. If Owner authorizes changes in the scope, extent, or character of the Specific Project, or Engineer's services, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in a Task Order within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.
- F. With respect to each Task Order, the number of Construction Contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established shall be identified in the Task Order. If the Work designed or specified by Engineer under a Task Order is to be performed or furnished under more than one prime contract, or if Engineer's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), then the Task Order will state the schedule for performance of Engineer's services in order to sequence and properly coordinate such services as are applicable to the Work under the Construction Contracts. If the Task Order does not address such sequencing and coordination, then Owner and Engineer shall jointly develop a schedule for sequencing and coordination of services prior to commencement of final design services; this schedule is to be prepared and included in or become an amendment to the authorizing Task Order whether or not the work under such contracts is to proceed concurrently.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices, the terms of Exhibit C, and the specific Task Order. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt of a complete invoice.

4.02 *Payments*

- A. *Application to Interest and Principal:* Payment will be credited first to any interest owed to Engineer and then to principal.
- B. *Failure to Pay:* If Owner fails to make any payment due Engineer for services and expenses within 60 days after receipt of complete Engineer's invoice, then:

1. Engineer may, after giving seven days written notice to Owner, suspend services under any Task Order issued until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Engineer for any such suspension.
- C. *Disputed Invoices*: If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion subject to the terms of Paragraph 4.01.
- D. *Sales or Use Taxes*: If after the Effective Date of a Task Order any governmental entity takes a legislative action that imposes additional sales or use taxes on Engineer's services or compensation under the Task Order, then Engineer may invoice such additional sales or use taxes for reimbursement by Owner. Owner shall reimburse Engineer for the cost of such invoiced additional sales or use taxes; such reimbursement shall be in addition to the compensation to which Engineer is entitled under the terms of Exhibit C and the specific Task Order.
- E. *Complete Invoice per Article 7 (8)*: It is the Engineer's responsibility to submit complete invoices. Any incomplete invoice is subject to delay of payment.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions (if any) of probable Construction Cost are to be made on the basis of Engineer's design, technical knowledge, construction management experience, qualifications, and general familiarity with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Owner requires greater assurance as to probable Construction Cost, then Owner agrees to obtain an independent cost estimate.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit for a Specific Project is established between Owner and Engineer in a Task Order, then such Construction Cost limit and Engineer's rights and responsibilities with respect thereto will be governed by Exhibit F, "Construction Cost Limit," which shall be attached to and incorporated in the Task Order. If no Construction Cost limit is established in a Task Order, then Exhibit F does not apply.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs for a Specific Project shall be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *Standard of Care*: The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer

makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer.

- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may retain such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. *Compliance with Laws and Regulations, and Policies and Procedures*
 - 1. Engineer and Owner shall comply with applicable Laws and Regulations.
 - 2. Engineer shall comply with the policies, procedures, and instructions of Owner that are applicable to Engineer's performance of services under this Agreement and that Owner provides to Engineer in writing, subject to the standard of care set forth in Paragraph 6.01.A, and to the extent compliance is not inconsistent with professional practice requirements.
 - 3. Each Task Order is based on Laws and Regulations and Owner-provided written policies and procedures as of the Effective Date of the Task Order. The following may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation:
 - a. changes after the Effective Date of the Task Order to Laws and Regulations;
 - b. the receipt by Engineer after the Effective Date of the Task Order of Owner-provided written policies and procedures;
 - c. changes after the Effective Date of the Task Order to Owner-provided policies or procedures.
- F. Engineer shall not be required to sign any document, no matter by whom requested, that would result in Engineer having to certify, guarantee, or warrant the existence of conditions whose existence Engineer cannot ascertain within its services for that Specific Project. Owner agrees not to make resolution of any dispute with Engineer or payment of any amount due to the Engineer in any way contingent upon Engineer signing any such document.
- G. The general conditions for any construction contract documents prepared hereunder are to be EJCDC® C-700 "Standard General Conditions of the Construction Contract" (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, unless expressly indicated otherwise in Exhibit J or in the specific Task Order.
- H. For Construction Management Services: Engineer as the construction manager for GWA shall meet the requirements in the construction management definition. The Engineer shall not supervise, direct, control,

or have authority over the Constructor's work. Notwithstanding the foregoing, Engineer has the responsibility to observe and monitor the Constructor's work and Site conditions for compliance with the approved design and the Laws and Regulations applicable to such Constructor's furnishing and performing of its work. Upon consultation with and concurrence by GWA, Engineer shall be responsible to issue directives and corrective action notices for the acts or omissions of any Constructor. Engineer shall not be responsible for the acts of omissions of any Constructor.

For Project Management Services: The Engineer as the project manager for GWA shall manage projects and contracts, provide project management oversight, and provide technical subject matter expertise, on behalf of GWA upon receiving concurrence from GWA.

The Owner has discretion to identify the Engineer as the project manager, construction manager, or both, as defined in the Task Order.

- I. Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work in accordance with the Construction Contract Documents.
- J. Engineer as the Construction/Project Manager for GWA shall not be responsible for any decision made regarding the Construction Contract Documents, or any application, interpretation, clarification, or modification of the Construction Contract Documents, other than those made by Engineer or its Consultants as defined in the Scope of Services and Task Order.
- K. Engineer is not required to provide and does not have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or for enforcement of construction insurance or surety bonding requirements.
- L. Engineer's services do not include providing legal advice or representation.
- M. Engineer's services do not include (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission, or (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances.
- N. While at a Site, Engineer, its Consultant, and their employees and representatives shall comply with the applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design With Construction Phase Services*

- A. For each design performed or furnished, Engineer shall be responsible only for those Construction Phase services that have been expressly required of Engineer in the authorizing Task Order as well all duties required in performance of the Engineer as the Construction/Project Manager as defined in the Scope of Work and/or Task Order. With the exception of such expressly required services described in the Scope of Work, the Engineer and Construction/Project Manager shall have design, Shop Drawing review, or other obligations during construction, and review and response to Contractor claims, Construction Contract administration, processing of Change Orders and submittals, revisions to the Construction Contract Documents during

construction, construction observation and review, review of Contractor's payment applications, and all other necessary Construction Phase administrative, engineering, and professional services.

6.03 *Use of Documents*

- A. All Documents are instruments of service, and Engineer shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Specific Project is completed.
- B. If Engineer is required to prepare or furnish Drawings or Specifications under the specific Task Order, then Engineer shall deliver to Owner at least one original printed record version of such Drawings and Specifications, signed and sealed according to applicable Laws and Regulations.
- C. Owner may make and retain copies of Documents for information and reference in connection with the use of the Documents on the Specific Project. Engineer grants Owner a limited license to use the Documents on the Specific Project, extensions of the Specific Project, and for related uses of the Owner, subject to receipt by Engineer of full payment due and owing for all services relating to preparation of the Documents, and subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use on the Specific Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Specific Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and Consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and its Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the Documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Specific Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Electronic Transmittals*

- A. Owner and Engineer may transmit, and shall accept, Specific Project-related correspondence, Documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Specific Project website, in accordance with a mutually agreeable protocol.
- B. If this Agreement or a Task Order does not establish protocols for electronic or digital transmittals, then Owner and Engineer shall jointly develop such protocols.
- C. When transmitting items in electronic media or digital format, the transmitting party makes no representations as to long term compatibility, usability, or readability of the items resulting from the recipient's use of software application packages, operating systems, or computer hardware differing from those used in the drafting or transmittal of the items, or from those established in applicable transmittal protocols.

6.05 *Insurance*

- A. Commencing with the Effective Date of the Agreement, Engineer shall procure and maintain insurance as set forth in Exhibit G, “Insurance.” Engineer shall cause Owner to be included as an additional insured on any applicable general liability insurance policy carried by Engineer that is applicable to a Specific Project(s) as defined in the Scope of Services and Task Order.
- B. Commencing with the Effective Date of the Agreement, Owner shall procure and maintain insurance as set forth in Exhibit G, “Insurance.” Owner shall cause Engineer and its Consultants to be listed as additional insureds on any general liability insurance policies carried by Owner, which are applicable to the Specific Project.
- C. Owner shall require Contractors to purchase and maintain policies of insurance covering workers’ compensation, general liability, motor vehicle damage and injuries, umbrella or excess liability and professional liability and other insurance necessary to protect Owner’s and Engineer’s interests in the Specific Project(s) defined in the Scope of Services and Task Order. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability insurance purchased and maintained by Contractor.
- D. Owner and Engineer shall each deliver to the other certificates of insurance, and applicable endorsements and policies evidencing the coverages indicated in Exhibit G. Such certificates, and endorsements and policies shall be furnished promptly within 7 working days after the Effective Date of the Agreement and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to a Specific Project(s) defined in the Scope of Services and Task Order, including but not limited to any builder’s risk policy, shall allow for waiver of subrogation rights and contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any insured thereunder or against Engineer or its Consultants. Owner and Engineer waive all rights against each other, Contractor, the Consultants, and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils or causes of loss covered by any builder’s risk policy and any other property insurance relating to the Specific Project. Owner and Engineer shall take appropriate measures in other Specific Project-related contracts to secure waivers of rights consistent with those set forth in this paragraph.
- F. All policies of insurance shall contain a provision and endorsement that the coverage afforded for the work will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 10 days prior written notice has been given to the primary insured. Upon receipt of such notice, the receiving party shall promptly forward a copy of the notice to the other party to this Agreement.
- G. Under the terms of any Task Order, or after commencement of performance of a Task Order, Owner may request that Engineer or its Consultants, at Owner’s sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner.

6.06 *Suspension and Termination*

- A. *Suspension*

1. By Owner: Owner may suspend a Task Order for up to 90 days upon seven days written notice to Engineer.
 2. By Engineer: Engineer may suspend services under a Task Order (a) if Owner has failed to pay Engineer for invoiced services and expenses, as set forth in Paragraph 4.02.B, or (b) in response to the presence of Constituents of Concern at the Site, as set forth in Paragraph 6.10.A.4.
 3. A suspension on a specific Task Order, whether by Owner or Engineer, shall not affect the duty of the two parties to proceed with their obligations under other Task Orders.
- B. *Termination for Cause—Task Order:* The obligation to provide further services under a specific Task Order may be terminated for cause:
1. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms of the specific Task Order or this Agreement, whose terms govern the specific Task Order, through no fault of the terminating party.
 2. By Engineer:
 - a. upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - b. upon seven days written notice if the Engineer's services under a Task Order are delayed or suspended for more than 90 days for reasons beyond Engineer's control, or as the result of the presence at the Site of undisclosed Constituents of Concern, as set forth in Paragraph 6.10.A.5.
 - c. Engineer shall have no liability to Owner on account of such termination.
 - d. Notwithstanding the foregoing, neither this Agreement nor the Task Order will terminate under Paragraph 6.06.B.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- C. *Termination for Cause—Agreement:* In the case of a default by Owner in its obligation to pay Engineer for its services under more than one specific Task Order, Engineer may request immediate payment of all amounts invoiced on other Task Orders, and may invoice Owner for continued services on such Task Orders on a two-week billing cycle, with payment due within one week of an invoice. If Owner fails to make such payments, then upon seven days notice Engineer may terminate this Agreement, including Engineer's services under all Task Orders.
- D. *Termination for Convenience by Owner:* GWA may, when the interest of GWA so requires, terminate this contract in whole or in part, for the convenience of the government or GWA by giving 30 days written notice of the termination to Engineer specifying the part of the contract terminated and when termination become effective. The Engineer shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination Engineer will stop work to the extent specified. Engineer shall also terminate outstanding orders and subcontracts as they relate to the terminated work. If applicable, Engineer

must complete the work not terminated by the notice of termination and may continue to incur obligations as are necessary to do so.

- E. *Effective Date of Termination:* The terminating party under Paragraphs 6.06.B, C, and D may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Task Order materials in orderly files.
- F. *Payments Upon Termination:*
1. In the event of any termination under Paragraph 6.06, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with the specific Task Order and this Agreement, and for all expenses incurred through the effective date of termination, to the extent that the specific Task Order (or Task Orders) allows reimbursement for such expenses. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of Paragraph 6.03.
 2. In the event of termination by Owner for convenience or by Engineer for cause, Engineer shall be entitled, in addition to invoicing for those items identified in Paragraph 6.06.F.1, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using the basis of compensation for Additional Services, as indicated in the specific Task Order.

6.07 *Controlling Law*

- A. This Agreement is to be governed by the Laws of the Territory of Guam.

6.08 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.08.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.
3. The Owner agrees that the substance of the provisions of this Paragraph 6.08.C shall appear in any Construction Contract Documents prepared for any Specific Project under this Agreement.

6.09 *Dispute Resolution*

- A. Owner and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights at law.
- B. If the parties fail to resolve a dispute through negotiation under Paragraph 6.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights at law.

6.10 *Environmental Condition of Site*

- A. With respect to each specific Task Order, Specific Project, and Site (unless indicated otherwise in a specific Task Order):
 1. Owner represents to Engineer that as of the Effective Date of the Task Order, to the best of Owner's knowledge no Constituents of Concern, other than those disclosed in Exhibit L to Engineer, exist at or adjacent to the Site.
 2. If Engineer encounters or learns of an undisclosed Constituent of Concern at the Site, then Engineer shall notify (a) Owner and (b) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
 3. It is acknowledged by both parties that Engineer's scope of services does not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern, then Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.
 4. If investigative or remedial action, or other professional services, are necessary with respect to undisclosed Constituents of Concern, or if investigative or remedial action beyond that reasonably contemplated is needed to address a disclosed or known Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, immediately suspend performance of services on the portion of the Specific Project affected thereby until such portion of the Specific Project is no longer affected.
 5. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under the specific Task Order, then the Engineer shall have the option of (a) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (b) terminating the specific Task Order for cause on seven days notice.
 6. Owner acknowledges that Engineer is performing professional services and construction/project management services for Owner and that Engineer is not and shall not be required to become an "owner," "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined

in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under a specific Task Order or this Agreement.

6.11 *Indemnification and Mutual Waiver*

- A. *Indemnification by Engineer:* To the fullest extent permitted by Laws and Regulations, Engineer shall indemnify and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from losses, damages, and judgments (including reasonable consultants' and attorneys' fees and expenses) arising from third-party claims or actions relating to this Agreement, any Task Order, or any Specific Project, provided that any such claim, action, loss, damages, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom except as expressly stated otherwise in this agreement, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants. This indemnification provision is subject to and limited by the provisions, if any, agreed to by Owner and Engineer in Exhibit I, "Limitations of Liability."
- B. *Indemnification by Owner:* Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants as required by Laws and Regulations and to the extent (if any) required in Exhibit I, Limitations of Liability.
- C. *Environmental Indemnification:* To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and Consultants from all claims, costs, losses, damages, actions, and judgments (including reasonable consultants' and attorneys' fees) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under any Site, provided that (1) any such claim, cost, loss, damages, action, or judgment is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom except as expressly stated otherwise in this agreement and (2) nothing in this Paragraph shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- D. *No Defense Obligation:* The indemnification commitments in this Agreement do not include a defense obligation by the indemnitor unless such obligation is expressly stated.
- E. *Percentage Share of Negligence:* To the fullest extent permitted by Laws and Regulations, a party's total liability to the other party and anyone claiming by, through, or under the other party for any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Engineer, and all other negligent entities and individuals.
- F. *Mutual Waiver:* To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's employees, officers, directors, members, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement, any Task Order, or a Specific Project, from any cause or causes.

6.12 *Records Retention*

- A. Engineer shall maintain on file in legible form, for a period of five years following completion or termination of its services under each Task Order, all Documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's performance under the Task Order. Upon Owner's

request, Engineer shall provide a copy of any such item to Owner at cost. Upon completion of each Task Order, Engineer shall submit to Owner one electronic copy and upon Owner's request one hard copy, of all documents, records (including cost records), and design calculations related to Engineer's services or pertinent to Engineer's work product related to its performance under the Task Order at time of final invoice of the Task Order.

6.13 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by Laws and Regulations, all causes of action arising under a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion of such Specific Project.
- F. *Applicability to Task Orders:* The terms and conditions set forth in this Agreement apply to each Task Order as if set forth in the Task Order, unless specifically modified. In the event of conflicts between this Agreement and a Task Order, the conflicting provisions of the Task Order shall take precedence for that Task Order. The provisions of this Agreement shall be modified only by a written instrument. Such amendments shall be applicable to all Task Orders issued after the effective date of the amendment if not otherwise set forth in the amendment.
- G. *Non-Exclusive Agreement:* Nothing herein shall establish an exclusive relationship between Owner and Engineer. Owner may enter into similar agreements with other professionals for the same or different types of services contemplated hereunder, and Engineer may enter into similar or different agreements with other project owners for the same or different services contemplated hereunder.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits or Task Order, or in the following definitions:
 - 1. *Addenda*—Written or graphic instruments issued prior to the opening of bids which clarify, correct, or change the bidding requirements or the proposed Construction Contract Documents.

2. *Additional Services*—Services to be performed for or furnished to Owner by Engineer in accordance with a Task Order, but which are not included in Basic Services for that Task Order.
3. *Agreement*—This written contract for professional services between Owner and Engineer, including all exhibits identified in Article 8.
4. *Application for Payment*—The form acceptable to Engineer which is to be used by a Contractor in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Construction Contract.
5. *Basic Services*—The services to be performed for or furnished to Owner by Engineer in accordance with a specific Task Order, as specified in the Task Order (but not including Additional Services performed or furnished pursuant to an amendment to the specific Task Order).
6. *Change Order*—A document which is signed by a Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Construction Contract Price or the Construction Contract Times, or other revision to the Construction Contract, issued on or after the effective date of the Construction Contract.
7. *Change Proposal*—A written request by a Contractor, duly submitted in compliance with the procedural requirements set forth in the Construction Contract, seeking an adjustment in Construction Contract Price or Construction Contract Times, or both; contesting an initial decision by Engineer concerning the requirements of the Construction Contract Documents or the acceptability of Work under the Construction Contract Documents; challenging a set-off against payments due; or seeking other relief with respect to the terms of the Construction Contract.
8. *Completed Invoice* – The invoice(s) for Task Orders with non-Lump Sum compensation shall be fully detailed for the rendered services for the indicated period and supported by appropriate proof of documentation including daily reports, timesheets approved and signed by the Engineer's representative and the original receipts for any reimbursable expenses. Owner shall pay against the original invoices. All must be accompanied by applicable tax documentation, if any.
9. *Constituent of Concern*—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to (a) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); (b) the Hazardous Materials Transportation Act, 49 U.S.C. §§5101 et seq.; (c) the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); (d) the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; (e) the Clean Water Act, 33 U.S.C. §§1251 et seq.; (f) the Clean Air Act, 42 U.S.C. §§7401 et seq.; or (g) any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
10. *Construction Contract*—The entire and integrated written contract between Owner and Contractor concerning the Work.
11. *Construction Contract Documents*—Those items designated as "Contract Documents" in the Construction Contract, and which together comprise the Construction Contract.

12. *Construction Contract Price*—The money that Owner has agreed to pay Contractor for completion of the Work in accordance with the Construction Contract Documents.
13. *Construction Contract Times*—The numbers of days or the dates by which a Contractor shall: (a) achieve milestones, if any, in the Construction Contract; (b) achieve Substantial Completion, and (c) complete the Work.
14. *Construction Cost*—The cost to Owner of the construction of those portions of an entire Specific Project designed or specified by or for Engineer under this Agreement and the specific Task Order, including construction labor, services, materials, equipment, insurance, and bonding costs, and allowances for contingencies. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damage to property; Owner's costs for legal, accounting, insurance counseling, or auditing services; interest or financing charges incurred in connection with a Specific Project; or the cost of other services to be provided by others to Owner. Construction Cost is one of the items comprising Total Project Costs.
15. *Construction Management*—Represent the owner's interest and provide technical expertise in the oversight of the project, directly for the owner. Primary duties shall be to provide oversight supervision of a construction site and contractor activities at a construction site to meet a project's goals, plans, specifications, schedules, and safety standards as defined in the Task Order.
16. *Constructor*—Any person or entity (not including the Engineer, its employees, agents, representatives, and Consultants), performing or supporting construction activities relating to the Specific Project(s), including but not limited to Contractors, Subcontractors, Suppliers, Owner's work forces, utility companies, other contractors, construction managers, testing firms, shippers, and truckers, and their employees, agents, and representatives.
17. *Consultants*—Individuals or entities having a contract with Engineer to furnish services with respect to a Specific Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
18. *Contractor*—The entity or individual with which Owner enters into a Construction Contract.
19. *Documents*—Data, reports, Drawings, Specifications, Record Drawings, building information models, civil integrated management models, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
20. *Drawings*—That part of the Construction Contract Documents that graphically shows the scope, extent, and character of the Work to be performed by a Contractor.
21. *Effective Date of the Agreement*—The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
22. *Effective Date of the Task Order*—The date indicated in the Task Order on which it becomes effective, but if no such date is indicated, it means the date on which the Task Order is signed and delivered by the last of the two parties to sign and deliver.
23. *Engineer*—The individual or entity named as such in this Agreement.

24. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but does not change the Construction Contract Price or the Construction Contract Times.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, statutes, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Owner*—The individual or entity with which Engineer has entered into this Agreement and for which Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning Specific Projects.
27. *Project Management*—Oversight of a Specific project(s) on behalf of the Owner, typically from the initial design to final completion, including oversight of construction management. The project manager represents the owner's interests and provides administrative and technical expertise to meet project goals, budgets, and schedules.
28. *Record Drawings*—Drawings depicting the completed Specific Project, or a specific portion of the completed Specific Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
29. *Owner's Project Representative*—The authorized representative of the Owner assigned to assist the Owner at the Site. As used herein, the term Owner's Project Representative or "OPR" includes any assistants or field staff of Owner's Project Representative.
30. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and that establish the standards by which such portion of the Work will be judged.
31. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information that are specifically prepared or assembled by or for a Contractor and submitted by a Contractor to Engineer to illustrate some portion of the Work. Shop Drawings, whether approved or not, are not Drawings and are not Construction Contract Documents.
32. *Site*—Lands or areas indicated in the Construction Contract Documents for a Specific Project as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements, and such other lands furnished by Owner which are designated for use of a Contractor.
33. *Specifications*—The part of the Construction Contract Documents that consists of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
34. *Specific Project*—The total specific undertaking to be accomplished for Owner by engineers, contractors, and others, including planning, study, design, construction, testing, commissioning, and start-up, and of which the services to be performed or furnished by Engineer under a specific Task Order are a part.

35. *Subcontractor*—An individual or entity having a direct contract with a Contractor or with any other Subcontractor for the performance of a part of the Work.
 36. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Construction Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms “substantially complete” and “substantially completed” as applied to all or part of the Work refer to Substantial Completion thereof.
 37. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with a Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or a Subcontractor.
 38. *Task Order*—A document executed by Owner and Engineer, including amendments if any, stating the scope of services, Engineer’s compensation, times for performance of services and other relevant information for a Specific Project.
 39. *Total Project Costs*—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Specific Project, including Construction Cost and all other Specific Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, the total costs of services of Engineer or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or Owner’s costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Specific Project, and the cost of other services to be provided by others to Owner.
 40. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Construction Contract Documents for a Specific Project. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning; all as required by such Construction Contract Documents.
 41. *Work Change Directive*—A written directive to a Contractor issued on or after the effective date of the Construction Contract, signed by Owner and recommended by Engineer, ordering an addition, deletion, or revision in the Work.
- B. *Day*: The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Suggested Form of Task Order*

- A. The Suggested Form of Task Order is attached as Attachment 1, and shall be used as the basis for preparing a specific Task Order for each Specific Project under this Agreement.

8.02 *Exhibits Included:*

- A. Exhibit A, Engineer's Services for Task Order. Services, tasks, and terms in Exhibit A as included with this Agreement are for reference in preparing the scope of services for specific Task Orders, and are contractually binding only to the extent expressly incorporated in a specific Task Order
- B. Exhibit B, Owner's Responsibilities. This Exhibit applies to all Task Orders.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses. The terms of Exhibit C that will be applicable to and govern compensation under a specific Task Order will be determined by the selection of compensation methods made in Paragraph 6, "Payments to Engineer," of the specific Task Order.
- D. Exhibit D, Duties, Responsibilities and Limitations of Authority of Owner's Project Representative. This Exhibit is not contractually binding except when expressly incorporated in a specific Task Order.
- E. Exhibit E, Notice of Acceptability of Work. Engineer shall use this Notice of Acceptability of Work form at the conclusion of construction on a Specific Project if (1) the form is expressly incorporated by reference in a specific Task Order, and Engineer's scope of services in the specific Task Order includes providing such a notice to Owner and Contractor, and (2) the Work is in fact acceptable pursuant to applicable requirements, subject to the terms of the notice.
- F. Exhibit F, Construction Cost Limit. This Exhibit is contractually binding only with respect to those specific Task Orders that (1) expressly incorporate Exhibit F by reference in the Task Order, Paragraph 2, "Services of Engineer," and (2) expressly state a specific Construction Cost Limit and contingency for the Specific Project in Paragraph 2, "Services of Engineer," of the specific Task Order.
- G. Exhibit G, Insurance. This Exhibit is applicable to all Task Orders.
- H. Exhibit H, Dispute Resolution. This Exhibit is applicable to all Task Orders.
- I. Exhibit I, Limitations of Liability. This Exhibit is applicable to all Task Orders.
- J. Exhibit J, Special Provisions. This Exhibit is applicable to all Task Orders.
- K. Exhibit K, Amendment to Task Order. Owner and Engineer may use this form during a Specific Project to modify the specific Task Order.
- L. Exhibit L, Disclosure of Known Constituents of Concerns. This Exhibit is applicable to all Task Orders.

8.03 *Total Agreement*

- A. This Agreement (together with the Appendices, Attachment, and any Exhibits included above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a written instrument duly executed by both parties.
- B. An executed Task Order under this Agreement (including any incorporated exhibits or attachments) constitutes the entire agreement between Owner and Engineer with respect to the Specific Project, and supersedes all prior written or oral understandings. Such a Task Order may only be amended, supplemented,

modified, or canceled by a written instrument duly executed by both parties. Amendments to such a Task Order should be based whenever possible on the format of Exhibit K to this Agreement.

8.04 *Designated Representatives*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to this Agreement on behalf of the respective party that the individual represents. Each Task Order shall likewise designate representatives of the two parties with respect to that Task Order.

8.05 *Engineer's Certifications*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 - 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on Page 1.

OWNER: Guam Waterworks Authority
By: [Signature] *Acting GM*
Print Name: MIGUEL C. BORDALLO, P.E.
Title: General Manager

ENGINEER:
By: [Signature]
Print Name: John Riegel
Title: Sr. Program Manager
Date Signed: _____

Engineer License or Firm's Certificate No. (if required): _____

State of: _____

Date Signed: _____

Date Signed: _____

Address for Owner's receipt of notices:

Address for Engineer's receipt of notices:

Gloria B. Nelson Public Service Building

Brown and Caldwell

688 Route 15

414 West Soledad Ave
STE 602, GCIC Bldg

Mangilao, Guam 96913

Hagatna, GU 96910

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

DESIGNATED REPRESENTATIVE
(Paragraph 8.04):

Joseph Claveria, P.E.

Title: _____

Title: Project Manager

Phone Number: _____

Phone Number: 671-300-4227

Certified Funds Available:

Approved as to Form:

Note: Contract sent for OAG review on 6/18/24. Response requested by 7/2/2024 but no OAG response received. If amendments as to form and legality are later required GWA can comply and seek amendments under the relevant procurement rules and regs OR seek out the legal remedies at 5 G.C.A. 5452

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

By: [Signature] *7/8/24*
THERESA C. ROJAS, ESQ.
GWA Legal Counsel

Contract Amount: \$ 1,000,000.00
Contingency: \$ _____
Amount Certified: \$ 1,000,000.00
Funding Source: ID/IQ Placeholder Account

**ATTACHMENT 1
TASK ORDER FORM**

Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for
Islandwide Sewer Collection/Transmission System
Repair, Rehabilitation, and Replacement Project
Project No. S22-02-BND

Task Order No. [], consisting of ___ pages.

[NOTE TO USER: Modify as to scope, compensation, schedule, and other key items.]

In accordance with Paragraph 1.01 of the Agreement Between Owner and Engineer for Professional Services – Task Order Edition, dated [] ("Agreement"), Owner and Engineer agree as follows:

1. Background Data

- a. Effective Date of Task Order:
- b. Owner: Guam Waterworks Authority
- c. Engineer:
- d. Specific Project (title):
- e. Specific Project (description):

2. Services of Engineer

- A. The specific services to be provided or furnished by Engineer under this Task Order are:
SEE ATTACHED SCOPE OF WORK DATED _____, EXHIBIT A.
- B. All of the services included above comprise Basic Services for purposes of Engineer's compensation under this Task Order.

3. Additional Services

Additional Services that may be authorized or necessary under this Task Order are set forth as Additional Services in Part 2—Additional Services, of Exhibit A, "Engineer's Services for Task Order," modified for this specific Task Order, and attached to and incorporated as part of this Task Order.

4. Owner's Responsibilities

Owner shall have those responsibilities set forth in Article 2 of the Agreement and in Exhibit B, subject to the following: **[State any additions or modifications to Exhibit B for this Specific Project here.]**

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and American Society of Civil Engineers. All rights reserved.

5. Task Order Schedule

In addition to any schedule provisions provided in Exhibit A or elsewhere, the parties shall meet the following schedule:

Party	Action	Schedule
Engineer	Furnish [] review copies of the Report and other Study and Report Phase deliverables to Owner.	Within [] days of the Effective Date of the Task Order.
Owner	Submit comments regarding Report and other Study and Report Phase deliverables to Engineer.	Within [] days of the receipt of Report and other Study and Report Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Report and other Study and Report Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Report and other Study and Report Phase deliverables.
Engineer	Furnish [] review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [] days of Owner's authorization to proceed with Preliminary Design Phase services.
Owner	Submit comments regarding Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Engineer.	Within [] days of the receipt of Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables to Owner.	Within [] days of the receipt of Owner's comments regarding the Preliminary Design Phase documents, opinion of probable Construction Cost, and other Preliminary Design Phase deliverables.
Engineer	Furnish [] copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of Owner's authorization to proceed with Final Design Phase services.
Owner	Submit comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or	Within [] days of the receipt of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or

	requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Engineer.	other construction procurement documents), and any other Final Design Phase deliverables from Engineer.
Engineer	Furnish [] copies of the revised final Drawings and Specifications, assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, to Owner.	Within [] days of the receipt of Owner's comments and instructions regarding the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables

6. Payments to Engineer

A. Owner shall pay Engineer for services rendered under this Task Order as follows:

	Description of Service	Amount	Basis of Compensation
1.	Basic Services (Part 1 of Exhibit A)	\$([])	[]
	a. Study and Report Phase (A1.01)	\$([])	[]
	b. Preliminary and Final Design Phase (A1.02, A1.03)	\$([])	[]
	c. Bidding or Negotiating Phase (A1.04)	\$([])	[]
	d. Construction Phase (A1.05)*	\$([])	[]
	e. Owner's Project Representative Services* (A1.05.A.2).	\$([])	[]
	f. Post-Construction Phase (A1.06)	\$([])	[]
	g. Commissioning Phase (A1.07)	\$([])	[]
	h. Other Services (see A1.08, and 2.D above)	\$([])	[]
	TOTAL COMPENSATION (lines 1.a-h)	\$([])	
2.	Additional Services (Part 2 of Exhibit A)	(N/A)	[]

*Based on a [] -month continuous construction period.

Compensation items and totals based in whole or in part on Hourly Rates or Direct Labor are estimates only. Lump sum amounts and estimated totals included in the breakdown by phases incorporate Engineer's labor, overhead, profit, reimbursable expenses (if any), and Consultants' charges, if any. For lump sum items, Engineer may alter the distribution of compensation between individual phases (line items) to be consistent with services actually rendered, but shall not exceed the total lump sum compensation amount unless approved in writing by the Owner.

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 and American Society of Civil Engineers. All rights reserved.

B. The terms of payment are set forth in Article 4 of the Agreement and in the applicable governing provisions of Exhibit C.

7. Consultants retained as of the Effective Date of the Task Order: (Complete if applicable OR indicated "NOT APPLICABLE.")

8. Other Modifications to Agreement and Exhibits: (Complete if applicable OR indicated "NOT APPLICABLE.")

9. Attachments: (Complete if applicable OR indicated "NOT APPLICABLE.")

10. Other Documents Incorporated by Reference: (Complete if applicable OR indicated "NOT APPLICABLE.")

11. Terms and Conditions (Complete if applicable OR indicated "NOT APPLICABLE.")

Execution of this Task Order by Owner and Engineer shall make it subject to the terms and conditions of the Agreement (as modified above), which Agreement is incorporated by this reference. Engineer is authorized to begin performance upon its receipt of a copy of this Task Order signed by Owner.

The Effective Date of this Task Order is [].

OWNER: Guam Waterworks Authority

ENGINEER:

By: _____

By: _____

Print Name: MIGUEL C. BORDALLO, P.E.

Print Name: _____

Title: General Manager

Title: _____

Engineer License or Firm's Certificate No. (if required): _____
State of: _____

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

E-Mail Address:

Email Address:

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and American Society of Civil Engineers. All rights reserved.

Phone: _____

Phone: _____

Engineering Department Approval:

By: _____
JEANET B. OWENS, P.E.
GWA Asst. General Manager of Engineering

Certified Funds Available:

Approved as to Form:

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

By: _____
THERESA G. ROJAS, ESQ.
GWA Legal Counsel

This is **EXHIBIT A**, consisting of [] pages,
referred to in and part of the **Task Order** dated [].

Engineer's Services for Task Order

NOTE: The following text as published describes a variety of services that may be included, in whole or in part, in a specific Task Order issued under the Agreement. Until this exhibit is customized for inclusion in a specific Task Order, or some or all of the exhibit is incorporated in a specific Task Order by reference, it has no legal or contractual effect.

Not all possible services are included in this exhibit. The user should revise and supplement the descriptions of services provided here for purposes of drafting the scope of Engineer's Services for each specific Task Order. The scope of services will typically include a list of potential Additional Services (see Paragraph A2.01) that may be needed as the Specific Project progresses. The user may choose to categorize some items shown here as Additional Services as Basic Services, or move some tasks listed in the Basic Services categories (Paragraphs A1.01 through A1.08) into Additional Services. Note that for the Additional Services in A2.01.A, Engineer is not authorized to perform and receive compensation for an Additional Service unless authorized by Owner to do so under a written amendment.

PART 1—BASIC SERVICES

A1.00 Engineer's Scope of Services and Fee Proposal - attached

A1.01 Study and Report Phase Services

A. As Basic Services, Engineer shall:

1. Consult with Owner to define and clarify Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations, and identify available data, information, reports, facilities plans, and site evaluations.
 - a. If Owner has already identified one or more potential solutions to meet its Specific Project requirements, then proceed with the study and evaluation of such potential solutions: ***[List the specific potential solutions here.]***
 - b. If Owner has not identified specific potential solutions for study and evaluation, then assist Owner in determining whether Owner's requirements, and available data, reports, plans, and evaluations, point to a single potential solution for Engineer's study and evaluation, or are such that it will be necessary for Engineer to identify, study, and evaluate multiple potential solutions.
 - c. If it is necessary for Engineer to identify, study, and evaluate multiple potential solutions, then identify three alternative solutions potentially available to Owner, unless Owner and Engineer mutually agree that some other specific number of alternatives should be identified, studied, and evaluated.
2. Identify potential solution(s) to meet Owner's Specific Project requirements, as needed.
3. Study and evaluate the potential solution(s) to meet Owner's Specific Project requirements.

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4. Visit the Site, or potential Specific Project sites, to review existing conditions and facilities, unless such visits are not necessary or applicable to meeting the objectives of the Study and Report Phase.
5. Advise Owner of any need for Owner to obtain, furnish, or otherwise make available to Engineer additional Specific Project-related data and information, for Engineer's use in the study and evaluation of potential solution(s) to Owner's Specific Project requirements, and preparation of a related report.
6. After consultation with Owner, recommend to Owner the solution(s) which in Engineer's judgment meet Owner's requirements for the Specific Project.
7. Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Specific Project to be designed or specified by Engineer, including but not limited to mitigating measures identified in an environmental assessment for the Specific Project.
8. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches, and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and Engineer's recommended solution(s). For each recommended solution Engineer will provide the following, which will be separately itemized: opinion of probable Construction Cost; proposed allowances for contingencies; the estimated total costs of design, professional, and related services to be provided by Engineer and its Consultants; and, on the basis of information furnished by Owner, a tabulation of other items and services included within the definition of Total Project Costs.
9. Advise Owner of any need for Owner to provide data or services of the types described in Exhibit B, for use in Project design, or in preparation for Contractor selection and construction.
10. When mutually agreed, assist Owner in evaluating the possible use of building information modeling; civil integrated management; geotechnical baselining of subsurface site conditions; innovative design, contracting, or procurement strategies; or other strategies, technologies, or techniques for assisting in the design, construction, and operation of Owner's facilities. The subject matter of this paragraph shall be referred to in Exhibit A and B as "Specific Project Strategies, Technologies, and Techniques."
11. If requested to do so by Owner, assist Owner in identifying opportunities for enhancing the sustainability of the Specific Project, and pursuant to Owner's instructions plan for the inclusion of sustainable features in the design.
12. Use ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data" as a means to advise the Owner on a recommended scope of work and procedure for the identification and mapping of existing utilities.
13. Develop a scope of work and survey limits for any topographic and other surveys necessary for design.
14. Pursuant to the Task Order schedule, furnish the required number of review copies of the Report and any other Study and Report Phase deliverables to Owner, and review it with Owner. Owner shall

submit to Engineer any comments regarding the furnished items within the time established in the Task Order schedule.

15. Pursuant to the Task Order schedule, revise the Report and any other Study and Report Phase deliverables in response to Owner's comments, as appropriate, and furnish the required number of copies of the revised Report and any other Study and Report Phase deliverables to the Owner.
- B. Engineer's services under the Study and Report Phase will be considered complete on the date when Engineer has delivered to Owner the revised Report and any other Study and Report Phase deliverables.

A1.02 Preliminary Design Phase

A. As Basic Services, Engineer shall:

1. Prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications, and written descriptions of the Specific Project.
2. In preparing the Preliminary Design Phase documents, use any specific applicable Specific Project Strategies, Technologies, and Techniques authorized by Owner during or following the Study and Report Phase, and include sustainable features, as appropriate, pursuant to Owner's instructions.
3. Provide necessary field surveys and topographic and utility mapping for Engineer's design purposes. Comply with the scope of work and procedure for the identification and mapping of existing utilities selected and authorized by Owner pursuant to advice from Engineer based on ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data," as set forth in Paragraph A1.01.A.12 above. If no such scope of work and procedure for utility mapping has been selected and authorized, then at a minimum the utility mapping will include Engineer contacting utility owners and obtaining available information.
4. Visit the Site as needed to prepare the Preliminary Design Phase documents.
5. Advise Owner if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist Owner in obtaining such reports, data, information, or services.
6. Continue to assist Owner with Specific Project Strategies, Technologies, and Techniques that Owner has chosen to implement.
7. Based on the information contained in the Preliminary Design Phase documents, prepare a revised opinion of probable Construction Cost, and assist Owner in tabulating the various cost categories which comprise Total Project Costs.
8. Obtain and review Owner's instructions regarding Owner's procurement of construction services (including instructions regarding advertisements for bids, instructions to bidders, and requests for proposals, as applicable), Owner's construction contract practices and requirements, insurance and bonding requirements, electronic transmittals during construction, and other information necessary for the finalization of Owner's bidding-related documents (or requests for proposals or other construction procurement documents), and Construction Contract Documents. Also obtain and review copies of Owner's design and construction standards, Owner's standard forms, general conditions (if other than EJCDC® C-700, Standard General Conditions of the Construction Contract,

2013 Edition), supplementary conditions, text, and related documents or content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and in the draft Construction Contract Documents, when applicable.

9. Pursuant to the Task Order schedule, furnish the required number of review copies of the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables to Owner, and review them with Owner. Within the time established in the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items.
 10. Pursuant to the Task Order schedule, revise the Preliminary Design Phase documents, opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables in response to Owner's comments, as appropriate, and furnish to Owner the required number of copies of the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.
- B. Engineer's services under the Preliminary Design Phase will be considered complete on the date when Engineer has delivered to Owner the revised Preliminary Design Phase documents, revised opinion of probable Construction Cost, and any other Preliminary Design Phase deliverables.

A1.03 *Final Design Phase*

- A. As Basic Services, Engineer shall:
1. Prepare final Drawings and Specifications indicating the scope, extent, and character of the Work to be performed and furnished by Contractor.
 2. Visit the Site as needed to assist in preparing the final Drawings and Specifications.
 3. Provide technical criteria, written descriptions, and design data for Owner's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design; assist Owner in consultations with such authorities; and revise the Drawings and Specifications in response to directives from such authorities, as appropriate.
 4. Advise Owner of any recommended adjustments to the opinion of probable Construction Cost.
 5. After consultation with Owner, include in the Construction Contract Documents any specific protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website. Any such protocols shall be applicable to transmittals between and among Owner, Engineer, and Contractor during the Construction Phase and Post-Construction Phase, and unless agreed otherwise shall supersede any conflicting protocols previously established for transmittals between Owner and Engineer.
 6. Assist Owner in assembling known reports and drawings of Site conditions, and in identifying the technical data contained in such reports and drawings upon which bidders or other prospective contractors may rely.

7. In addition to preparing the final Drawings and Specifications, assemble drafts of other Construction Contract Documents based on specific instructions and contract forms, text, or content received from Owner.
 8. Prepare or assemble draft bidding-related documents (or requests for proposals or other construction procurement documents), based on the specific bidding or procurement-related instructions and forms, text, or content received from Owner.
 9. Pursuant to the Task Order schedule, furnish for review by Owner, its legal counsel, and other advisors, the required number of copies of the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables, and review them with Owner. Within the time required by the Task Order schedule, Owner shall submit to Engineer any comments regarding the furnished items, and any instructions for revisions.
 10. Pursuant to the Task Order schedule, revise the final Drawings and Specifications, assembled drafts of other Construction Contract Documents, the draft bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables in accordance with comments and instructions from the Owner, as appropriate, and submit the required number of final copies of such documents to Owner after receipt of Owner's comments and instructions.
- B. Engineer's services under the Final Design Phase will be considered complete on the date when Engineer has delivered to Owner the final Drawings and Specifications, other assembled Construction Contract Documents, bidding-related documents (or requests for proposals or other construction procurement documents), and any other Final Design Phase deliverables.
- C. The number of prime contracts for Work designed or specified by Engineer upon which the Engineer's compensation has been established under this Task Order is one. If more prime contracts are awarded, Engineer shall be entitled to an equitable increase in its compensation under this Task Order.

A1.04 Bidding or Negotiating Phase

- A. As Basic Services, Engineer shall:
1. Assist Owner in advertising for and obtaining bids or proposals for the Work, assist Owner in issuing assembled design, contract, and bidding-related documents (or requests for proposals or other construction procurement documents) to prospective contractors, and, where applicable, maintain a record of prospective contractors to which documents have been issued, attend pre-bid conferences, if any, and receive and process contractor deposits or charges for the issued documents.
 2. Prepare and issue Addenda as appropriate to clarify, correct, or change the issued documents.
 3. Provide information or assistance needed by Owner in the course of any review of proposals or negotiations with prospective contractors.
 4. Consult with Owner as to the qualifications of prospective contractors.

5. Consult with Owner as to the qualifications of Subcontractors, suppliers, and other individuals and entities proposed by prospective contractors, for those portions of the Work as to which review of qualifications is required by the issued documents.
 6. If the issued documents require, the Engineer shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by prospective contractors, provided that such proposals are allowed by the bidding-related documents (or requests for proposals or other construction procurement documents) prior to award of contracts for the Work. Services under this paragraph are subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
 7. Attend the bid opening, prepare bid tabulation sheets to meet Owner's schedule, and assist Owner in evaluating bids or proposals, assembling final contracts for the Work for execution by Owner and Contractor, and in issuing notices of award of such contracts.
 8. If Owner engages in negotiations with bidders or proposers, assist Owner with respect to technical and engineering issues that arise during the negotiations.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective contractors (except as may be required if Exhibit F is a part of this Task Order).

A1.05 Construction Phase

- A. As Basic Services, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in the Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Owner's Project Representative (OPR):* Provide the services of an OPR at the Site to assist the Owner and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the OPR are as set forth in Exhibit D. The furnishing of such OPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Exhibit D. ***[If Engineer will not be providing the services of an OPR, then delete this Paragraph 2 by inserting the word "DELETED" after the paragraph title, and do not include Exhibit D in the Task Order.]***
 3. *Selection of Independent Testing Laboratory:* Assist Owner in the selection of an independent testing laboratory to perform the testing services identified in Exhibit B, Paragraph B2.01.A.

4. *Pre-Construction Conference:* Participate in a pre-construction conference prior to commencement of Work at the Site.
5. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
6. *Original Documents:* If requested by Owner to do so, maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.
7. *Schedules:* Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
8. *Baselines and Benchmarks:* As appropriate, establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
9. *Visits to Site and Observation of Construction:* In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Owner's Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement, this Task Order, and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Owner's Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Owner's Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have

control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

10. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
11. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
12. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner, as appropriate, and prepare Change Orders and Work Change Directives as required.
15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews, obtain information, and prepare findings, conclusions, and recommendations for Owner's use, subject to the limitations and responsibilities under the Agreement and the Construction Contract.
16. *Non-reviewable matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.

17. *Shop Drawings, Samples, and Other Submittals*: Review and approve or take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.
18. *Substitutes and "or-equal"*: Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of Paragraph A2.01.B.2 of this Exhibit A.
19. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be inspected, tested, or approved.
 - c. Pursuant to the terms of the Construction Contract, require additional inspections or testing of the Work, whether or not the Work is fabricated, installed, or completed.
20. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, approve it in whole, or deny it in part and approve it in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
21. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents

(subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Agreement or this Task Order. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
22. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.05.A.17. Receive from Contractor, review, and transmit to Owner the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The extent of Engineer's review of record documents shall be to check that Contractor has submitted all pages.
 23. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding any remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the specific Project to determine if the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor in the form attached hereto as Exhibit E ("Notice of Acceptability of Work") (also available as a construction form, EJCDC® C-626 (2013)) that the Work is acceptable

(subject to the provisions of the Notice and Paragraph A1.05.A.21.b) to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under the Agreement and this Task Order.

25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.

B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the specific Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the specific Project involves more than one prime contract as indicated in Paragraph A1.03.C, then Construction Phase services may be rendered at different times in respect to the separate contracts. Subject to the provisions of Article 3, Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Owner's Project Representative services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the final Construction Contract under the Task Order.

A1.06 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, as Basic Services, Engineer shall:
1. Together with Owner, visit the Project to observe any apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of any damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of any such defective Work and any needed repairs.
 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of any damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

A1.07 *Commissioning Phase*

- A. As Basic Services, Engineer shall:
1. Assist Owner in connection with the adjusting of Specific Project equipment and systems.
 2. Assist Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.

3. Prepare operation and maintenance manuals.
4. Assist Owner in developing procedures for (a) control of the operation and maintenance of Specific Project equipment and systems, and (b) related record-keeping.
5. Prepare and furnish to Owner, in the format agreed to, Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

A1.08 *Other Services:* Each specific Task Order may include Basic Services that do not fit into the categories above. Such services should be expressly stated in the specific Task Order itself.

PART 2—ADDITIONAL SERVICES

A2.01 *Additional Services Requiring an Amendment to Task Order*

- A. *Advance Written Authorization Required:* During performance under a Task Order, Owner may authorize Engineer in writing to furnish or obtain from others Additional Services of the types listed below. Unless expressly indicated above or in the specific Task Order to be included Basic Services, the following services are not included as part of Basic Services and will be paid for by Owner as Additional Services, using the basis of compensation for Additional Services, as indicated in the specific Task Order.
1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans, or advances in connection with the Specific Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Specific Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Specific Project.
 2. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Specific Project designed or specified by Engineer, or the Specific Project's design requirements, including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Construction Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of the Task Order or are due to any other causes beyond Engineer's control.
 4. Services resulting from Owner's request to evaluate additional Study and Report Phase alternative solutions beyond those agreed to in Paragraph A1.01.A.1 and 2.
 5. Services required as a result of Owner's providing incomplete or incorrect Specific Project information to Engineer.
 6. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.

7. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. based on the engineering and technical aspects of the Project, the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
8. Furnishing services of Consultants for other than Basic Services.
9. Providing data or services of the types described in Exhibit B, when Owner retains Engineer to provide such data or services instead of Owner furnishing the same.
10. Providing the following services:
 - a. Services attributable to more prime construction contracts than specified in Paragraph A1.03.C or the specific Task Order.
 - b. Services to arrange for performance of construction services for Owner by contractors other than the principal prime Contractor, and administering Owner's contract for such services.
11. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services.
12. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other documents as a result of such review processes.
13. Preparing additional bidding-related documents (or requests for proposals or other construction procurement documents) or Construction Contract Documents for alternate bids or cost estimates requested by Owner for the Work or a portion thereof.
14. Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required to complete services required by Paragraph 5.02.A and Exhibit F.