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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 <sup>st</sup> through 30 <sup>th</sup> Day
\$1,000.....	31 <sup>st</sup> through 60 <sup>th</sup> Day
\$1,500.....	61 <sup>st</sup> Day and beyond

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.

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

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

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 7 b. List of Interim Milestones.

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

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

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

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

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

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

15 (7) Failure to submit:

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

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

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

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

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 26 34.

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

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

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

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

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

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

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

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

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

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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21  
22

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

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

4 66. At the time of payment, GWA shall send notice that payment has been made: (i)  
5 to EPA via email at [cinwd\\_acctsreceivable@epa.gov](mailto: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.

19  
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.

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

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

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

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

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

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

11 79. The notifying Defendant may seek judicial review of the dispute by filing with the  
12 Court and serving on the United States, in accordance with Section XIII (Notices), a motion  
13 requesting judicial resolution of the dispute. The motion must be filed within thirty (30) Days of  
14 receipt of the United States' Statement of Position pursuant to the preceding Paragraph. The  
15 motion shall contain a written statement of the notifying Defendant's position on the matter in  
16 dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set  
17 forth the relief requested and any schedule within which the dispute must be resolved for orderly  
18 implementation of the Consent Decree. The motion may not raise any issue not raised in GWA's  
19 Statement of Position pursuant to Paragraph 77, unless the United States raises a new issue of  
20 law or fact in its Statement of Position.  
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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.  
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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  
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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.  
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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  
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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  
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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.  
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26  
27 93. This Consent Decree is not a permit, or a modification of any permit, under any  
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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  
28

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

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

6 112. 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.  
26  
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28

**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 9<sup>th</sup> 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**  
**ENGEL**  Digitally signed by  
BETHANY ENGEL  
Date: 2024.01.30  
16:57:07 -05'00'

9 Date

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

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

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

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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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. Moylan*

*fb*

DOUGLAS B. MOYLAN  
ATTORNEY GENERAL OF GUAM

*10/23/23*  
Date

Date

LOU LEON GUERRERO  
GOVERNOR OF GUAM

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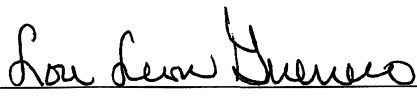
THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of *United States v. Guam Waterworks Authority and the Government of Guam*, Civil No. 24-00004..

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:

<b>Party</b>	<b>Action</b>	<b>Schedule</b>
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

<b>Description of Service</b>	<b>Amount</b>	<b>Basis of Compensation</b>
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
<b>SUBTOTAL</b>	<b>\$3,597,574.17</b>	
<b>GRT (5.263%)</b>	<b>\$189,232.40</b>	
<b>Grand Total Task Order 2</b>	<b>\$3,786,806.57</b>	

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, IFICP





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

## AECOM

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)**

## AECOM

- 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,



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 %
	<b>Base Services</b>				
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%
	<b>Total</b>	\$4,007,038.53	\$3,786,806.57	-\$220,231.96	-5.50%
	<b>Optional Services</b>				
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%
	<b>Total</b>	\$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

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Page 1

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**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	Date
Signed: _____	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

**WHEREAS**, to meet time sensitive requirements of the PCD, GWA negotiated additional work with B&C for sewer main line (SML) and force main (FM) assessment and

1 preliminary design in high-priority areas in the southern half of the island, as well as pump  
2 station (PS) assessment and complete design for high-priority PS 16 and 17, and Ejector Stations  
3 (ES) 3 and 6; and

4  
5 **WHEREAS**, GWA negotiated with B&C to conduct assessments and preliminary  
6 designs for Capacity Assurance Projects in Agat, Santa Rita, and Merizo, as well as to address  
7 Acute Defects, as required by the PCD (sections V.A.15 and V.A.12.a) and outlined in the 2018  
8 Water Resource Master Plan (WRMP), Volume 3, Section 11; and

9  
10 **WHEREAS**, GWA also negotiated with B&C to conduct assessment and preliminary  
11 design on PS 16 and PS 17, and ES 3 and 6 in Merizo, and their associated FMs as required by  
12 the PCD in section V.A.26; and

13  
14 **WHEREAS**, the negotiated work under the PCD will be consolidated into Task Order  
15 No. 2 for a total amount of Three Million Nine Hundred Sixty-Two Thousand Three Hundred  
16 Sixty-Two Dollars (\$3,962,362.00) (See Exhibit D); and

17  
18 **WHEREAS**, GWA management seeks CCU approval for Amendment No. 1 to the  
19 Owner-Engineer Agreement (See Exhibit E) under the IDIQ contract to introduce a new Task  
20 Order No. 2 with B&C, and to increase funding accordingly to complete the work as outlined  
21 above; and

22  
23 **WHEREAS**, the total currently approved IDIQ contract agreement amount is One  
24 Million Dollars (\$1,000,000.00); and

25  
26 **WHEREAS**, to execute Amendment No. 1 to implement Task Order No. 2, an  
27 amendment to the Owner-Engineer IDIQ contract is required to increase the maximum contract  
28 amount by Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars  
29 (\$3,962,362.00); and

30  
31 **WHEREAS**, GWA management seeks CCU approval to increase the total IDIQ contract  
32 amount by Three Million Nine Hundred Sixty-Two Thousand Three Hundred Sixty-Two Dollars

1 (\$3,962,362.00), bringing the new total contract value to Four Million Nine Hundred Sixty-Two  
2 Thousand Three Hundred Sixty-Two Dollars (\$4,962,362.00) to execute Task Order No. 2; and  
3

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

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

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

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

28 **DULY AND REGULARLY ADOPTED**, this 22<sup>nd</sup> day of October 2024.

29 Certified by:

Attested by:

30 \_\_\_\_\_  
31 **JOSEPH T. DUENAS**

\_\_\_\_\_ **PEDRO ROY MARTINEZ**

32 Chairperson

Secretary



**Exhibit A**

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

**TASK ORDER EDITION**

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**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.

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**[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:

<b>Party</b>	<b>Action</b>	<b>Schedule</b>
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

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	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)	\$( [ ] )	[ ]
	<b>TOTAL COMPENSATION (lines 1.a-h)</b>	\$( [ ] )	
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.

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:



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

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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.

15. Preparing conformed Construction Contract Documents that incorporate and integrate the content of all Addenda and any amendments negotiated by Owner and Contractor.
16. Providing Construction Phase services beyond the original date for completion and readiness for final payment of Contractor, but only if such services increase the total quantity of services to be performed in the Construction Phase, rather than merely shifting performance of such services to a later date.
17. Preparing Record Drawings, and furnishing such Record Drawings to Owner.
18. Supplementing Record Drawings with information regarding the completed Project, Site, and immediately adjacent areas obtained from field observations, Owner, utility companies, and other reliable sources.
19. Conducting surveys, investigations, and field measurements to verify the accuracy of Record Drawing content obtained from Contractor, Owner, utility companies, and other sources; revise and supplement Record Drawings as needed.
20. Preparation of operation, maintenance, and staffing manuals.
21. Protracted or extensive assistance in refining and adjusting of Project equipment and systems (such as initial startup, testing, and balancing).
22. Assistance to Owner in training Owner's staff to operate and maintain Specific Project equipment and systems.
23. Assistance to Owner in developing systems and procedures for (a) control of the operation and maintenance of Project equipment and systems, and (b) related recordkeeping.
24. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, mediation, lien or bond claim, or other legal or administrative proceeding involving the Project.
25. Overtime work requiring higher than regular rates.
26. Providing construction surveys and staking to enable Contractor to perform its work other than as required under Paragraph A1.05.A.8, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
27. Providing more extensive services required to enable Engineer to issue notices or certifications requested by Owner.
28. Excessive services during any correction period, or with respect to guarantees called for in the Construction Contract (except as agreed to under Basic Services).
29. Provide assistance in responding to the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.

30. Other additional services performed or furnished by Engineer not otherwise provided for in this Agreement.
- B. *Advance Written Authorization Not Required:* Engineer shall advise Owner in advance that Engineer will immediately commence to perform or furnish the Additional Services of the types listed below. For such Additional Services, Engineer need not request or obtain specific advance written authorization from Owner. Engineer shall cease performing or furnishing such Additional Services upon receipt of written notice from Owner. 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. Services in connection with Work Change Directives and Change Orders to reflect changes requested by Owner.
  2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; services after the award of the Construction Contract in evaluating and determining the acceptability of a proposed "or equal" or substitution which is found to be inappropriate for the Project; evaluation and determination of an excessive number of proposed "or equals" or substitutions, whether proposed before or after award of the Construction Contract.
  3. Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
  4. Additional or extended services arising from (a) the presence at the Site of any Constituent of Concern or items of historical or cultural significance, (b) emergencies or acts of God endangering the Work, (c) damage to the Work by fire or other causes during construction, (d) a significant amount of defective, neglected, or delayed Work, (e) acceleration of the progress schedule involving services beyond normal working hours, or (f) default by Contractor.
  5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of the Work by Owner prior to Substantial Completion.
  6. Evaluating unreasonable or frivolous requests for interpretation or information (RFIs), Change Proposals, or other demands from Contractor or others in connection with the Work, or an excessive number of RFIs, Change Proposals, or demands.
  7. Reviewing a Shop Drawing or other Contractor submittal more than three times, as a result of repeated inadequate submissions by Contractor.
  8. While at the Site, compliance by Engineer and its staff with those terms of Owner's or Contractor's safety program provided to Engineer subsequent to the Effective Date that exceed those normally required of engineering personnel by federal, State, or local safety authorities for similar construction sites.



This is **EXHIBIT B**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

## **Owner's Responsibilities**

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Article 2 of the Agreement is amended and supplemented to include the following responsibilities unless expressly stated otherwise in a Task Order.

### **B2.01 Specific Responsibilities**

#### **A. Owner shall:**

1. Provide Engineer with all criteria and full information as to Owner's requirements for the Specific Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations.
2. Give instructions to Engineer 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. Furnish copies (or give specific directions requesting Engineer to use copies already in Engineer's possession) of all 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 and content for Engineer to include in the draft bidding-related documents (or requests for proposals or other construction procurement documents), and draft Construction Contract Documents, when applicable. Owner shall have responsibility for the final content of (1) such bidding-related documents (or requests for proposals or other construction procurement documents), and (2) those portions of any Construction Contract other than the design (as set forth in the Drawings, Specifications, or otherwise), and other engineering or technical matters; and Owner shall seek the advice of Owner's legal counsel, risk managers, and insurance advisors with respect to the drafting and content of such documents.
3. Furnish to Engineer any other available information pertinent to the Specific Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the Site.
4. Following Engineer's assessment of initially-available Specific Project information and data and upon Engineer's request, obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
  - a. Property descriptions.

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#### **Exhibit B– Owner's Responsibilities**

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- b. Zoning, deed, and other land use restrictions.
  - c. Utility and topographic mapping and surveys.
  - d. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
  - e. Explorations and tests of subsurface conditions at or adjacent to the Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at the Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
  - f. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Specific Project, the Site, and adjacent areas.
  - g. Data or consultations as required for the Project but not otherwise identified in this Agreement.
5. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
6. Recognizing and acknowledging that Engineer's services and expertise do not include the following services, provide, as required for the Project:
- a. Accounting, bond and financial advisory (including, if applicable, "municipal advisor" services as described in Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) and the municipal advisor registration rules issued by the Securities and Exchange Commission), independent cost estimating, and insurance counseling services.
  - b. Legal services with regard to issues pertaining to the Project as Owner requires, Contractor raises, or Engineer reasonably requests.
  - c. Such auditing services as Owner requires to ascertain how or for what purpose Contractor has used the money paid.
7. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Construction Contract Documents (other than those required to be furnished or arranged by Contractor), or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof. Provide Engineer with the findings and reports generated by testing laboratories, including findings and reports obtained from or through Contractor.
8. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.

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**Exhibit B– Owner's Responsibilities**

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9. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
10. If Owner designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Owner at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
11. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, other work is to be performed at or adjacent to the Site by others or by employees of Owner, or if Owner arranges to have work performed at the Site by utility owners, then Owner shall coordinate such work unless Owner designates an individual or entity to have authority and responsibility for coordinating the activities among the various prime Contractors and others performing work. In such case Owner shall define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
12. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
13. Examine all alternative solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, risk manager, insurance counselor, financial/municipal advisor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
14. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
15. Advise Engineer as to whether Engineer's assistance is requested in identifying opportunities for enhancing the sustainability of the Project.
16. Place and pay for advertisement for Bids in appropriate publications.
17. Furnish to Engineer data as to Owner's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Owner so that Engineer may assist Owner in collating the various cost categories which comprise Total Project Costs.
18. Attend and participate in the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Site visits to determine Substantial Completion and readiness of the completed Work for final payment.
19. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement, as required.

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**Exhibit B– Owner's Responsibilities**

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20. Perform or provide the following: *[Here list any additional Owner responsibilities] If there are "NONE" should indicate "NONE" or "NOT APPLICABLE."*

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Exhibit B-- Owner's Responsibilities

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Page 4

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This is **EXHIBIT C**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

## **Payments to Engineer for Services and Reimbursable Expenses**

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Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties:

### **ARTICLE 2 – OWNER'S RESPONSIBILITIES**

#### **C2.01 Basis of Compensation**

- A. The bases of compensation (compensation methods) for Basic Services (including if applicable the bases of compensation for individual phases of Basic Services) and for Additional Services shall be identified in each specific Task Order (see Suggested Form of Task Order, Paragraph 6). Owner shall pay Engineer for services in accordance with the applicable basis of compensation.
- B. The three following bases of compensation are used for services under the Task Orders, as identified in each specific Task Order:
  1. Lump Sum (plus any expenses expressly eligible for reimbursement)
  2. Standard Hourly Rates (plus any expenses expressly eligible for reimbursement)
  3. Direct Labor Costs Times a Factor (plus any expenses expressly eligible for reimbursement)

#### **C2.02 Explanation of Compensation Methods**

##### **A. Lump Sum**

1. Owner shall pay Engineer a Lump Sum amount for the specified category of services.
2. The Lump Sum will include compensation for Engineer's services and services of Consultants, if any. The Lump Sum constitutes full and complete compensation for Engineer's services in the specified category, including labor costs, overhead, profit, expenses (other than those expenses expressly eligible for reimbursement, if any), and Consultant charges.
3. In addition to the Lump Sum, Engineer is also entitled to reimbursement from Owner for the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of the services in the specified category (see Appendix 1 for rates or charges): [ ] ***[List any such reimbursable expenses here, or indicate "None." If "None" then the reference to Appendix 1 may be deleted.]***
4. The portion of the Lump Sum amount billed for Engineer's services will be based upon Engineer's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.

5. The basis of any adjustment under this Article may be included at the request of the Owner, cost and pricing data pursuant to 2 GAR §3118 and will also be subject to 2 GAR §5107 Fiscal Responsibility.

**B. Standard Hourly Rates**

1. For the specified category of services, the Owner shall pay Engineer an amount equal to the cumulative hours charged to the Specific Project by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
3. Engineer's Reimbursable Expenses Schedule and Standard Hourly Rates are attached to this Exhibit as Appendices 1 and 2.
4. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation will incorporate all labor at Standard Hourly Rates, and reimbursable expenses (including Consultants' charges, if any).
5. The amounts billed will be based on the cumulative hours charged to the specified category of services on the Specific Project during the billing period by each class of Engineer's employees times Standard Hourly Rates for each applicable billing class, plus reimbursable expenses (including Consultant's charges, if any).
6. The Standard Hourly Rates and Reimbursable Expenses Schedule shall be adjusted annually (as of [ ] ) to reflect equitable changes in the compensation payable to Engineer.

**C. Direct Labor Costs Times a Factor**

1. For the specified category of services, the Owner shall pay Engineer an amount equal to Engineer's Direct Labor Costs times a factor of [ ] for the services of Engineer's employees engaged on the Specific Project. Direct Labor Costs means salaries and wages paid to employees but does not include payroll-related costs or benefits. Under this method, Engineer shall also be entitled to reimbursement from Owner for the expenses identified in Paragraph C2.03 below, and Appendix 1.
2. Engineer's Reimbursable Expenses Schedule is attached to this Exhibit as Appendix 1.
3. The total estimated compensation for the specified category of services shall be stated in the Task Order. This total estimated compensation incorporates all labor, overhead, profit, and reimbursable expenses (including Consultant's charges, if any).
4. The amounts billed will be based on the applicable Direct Labor Costs for the cumulative hours charged to the specified category of services on the Specific Project during the billing period times the above-designated Factor, plus reimbursable expenses (including Consultant's charges, if any).

5. The Direct Labor Costs and the factor applied to Direct Labor Costs will be adjusted annually (as of [ ]) to reflect equitable changes in the compensation payable to Engineer.

C2.03 *Reimbursable Expenses*

- A. Under the Lump Sum method basis of compensation to Engineer, unless expressly indicated otherwise the Lump Sum amount **includes** the following categories of expenses: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier charges; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; and Consultant charges. These expenses are not reimbursable under the Lump Sum method, unless expressly indicated otherwise in C2.02.A.3 above.
- B. Expenses eligible for reimbursement under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods of compensation include the following expenses reasonably and necessarily incurred by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Task Order: transportation (including mileage), lodging, and subsistence incidental thereto; providing and maintaining field office facilities including furnishings and utilities; toll telephone calls, mobile phone services, and courier services; reproduction of reports, Drawings, Specifications, bidding-related or other procurement documents, Construction Contract Documents, and similar Specific Project-related items; Consultant charges; and any other expenses identified in Appendix 1.
- C. Reimbursable expenses reasonably and necessarily incurred in connection with services provided under the Direct Labor Costs Times a Factor and Standard Hourly Rate methods shall be paid at the rates set forth in Appendix 1, Reimbursable Expenses Schedule, subject to the factors set forth below.
- D. The amounts payable to Engineer for reimbursable expenses will be the Project-specific internal expenses actually incurred or allocated by Engineer, plus all invoiced external reimbursable expenses allocable to the Specific Project, the latter multiplied by a factor of [ 1.1 ].
- E. Whenever Engineer is entitled to compensation for the charges of its Consultants, those charges shall be the amount billed by such Consultants to Engineer times a factor of [ ].
- F. The external reimbursable expenses and Consultants' factors include Engineer's overhead and profit associated with Engineer's responsibility for the administration of such services and costs.

C2.04 *Serving as a Witness*

- A. SECTION DELETED / NOT USED

C2.05 *Other Provisions Concerning Payment*

- A. *Extended Contract Times:* Should the Contract Times to complete the Work be extended beyond the period stated in the Task Order, payment for Engineer's services shall be continued based on the Standard Hourly Rates Method of Payment.
- B. *Estimated Compensation Amounts*

1. Engineer's estimate of the amounts that will become payable for services are only estimates for planning purposes, are not binding on the parties, and are not the minimum or maximum amounts payable to Engineer under the Agreement.
2. When estimated compensation amounts have been stated in a Task Order and it subsequently becomes apparent to Engineer that a compensation amount thus estimated will be exceeded, Engineer shall give Owner written notice thereof. Promptly thereafter Owner and Engineer shall review the matter of services remaining to be performed and compensation for such services. Owner shall either agree to such compensation exceeding said estimated amount or Owner and Engineer shall agree to a reduction in the remaining services to be rendered by Engineer so that total compensation for such services will not exceed said estimated amount when such services are completed. If Engineer exceeds the estimated amount before Owner and Engineer have agreed to an increase in the compensation due Engineer or a reduction in the remaining services, the Engineer shall give written notice thereof to Owner and shall be paid for all services rendered thereafter.



This is **Appendix 1 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition**, dated [ ].

### Reimbursable Expenses Schedule

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Expenses eligible for reimbursement are subject to review and adjustment per Exhibit C. Rates and charges for reimbursable expenses as of the date of the Agreement are:

8"x11" Copies/Impressions	____/page
Copies of Drawings	____/sq. ft.
Mileage (auto)	____/mile
Air Transportation	at cost
CAD Charge	____/hour
Laboratory Testing	at cost
Health and Safety Level D	____/day
Health and Safety Level C	____/day
Meals and Lodging	at cost

***[Note to User: Customize this Schedule to reflect anticipated reimbursable expenses on this Specific Project]***

This is **Appendix 2 to EXHIBIT C**, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [     ].

**Standard Hourly Rates Schedule**

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The following standard hourly rates are subject to review and adjustment per Exhibit C. Hourly rates for services as of the Effective Date of the Task Order are:

Billing Class VIII	\$ ____/hour
Billing Class VII	\$ ____/hour
Billing Class VI	\$ ____/hour
Billing Class V	\$ ____/hour
Billing Class IV	\$ ____/hour
Billing Class III	\$ ____/hour
Billing Class II	\$ ____/hour
Billing Class I	\$ ____/hour

***[Note to User: The categories above (Billing Classes VIII through I) are traditional hourly rate classes for engineering services, but the classes themselves do not currently have widely accepted or understood meanings or definitions. Many approaches are possible for establishing the hourly rates that will be charged. These include defining the categories (for example, “Billing Class VI—Assistant Project Manager”), or using the engineering firm’s own professional classifications. If hourly rates are ascribed to specific individuals, the user should ensure that changes in professional personnel and rates are allowable over the Project’s course.]***

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This is **EXHIBIT D**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

**Schedule of Duties, Responsibilities, and Limitations of Authority of Owner’s Project Representative  
(NOT USED)**

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**Exhibit D – Duties, Responsibilities, and Limitations of Authority of Owner’s Project Representative  
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This is **EXHIBIT E**, consisting of [       ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [       ].

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**NOTICE OF ACCEPTABILITY OF WORK**

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SPECIFIC PROJECT:

---

OWNER:

OWNER'S CONSTRUCTION CONTRACT IDENTIFICATION:

EFFECTIVE DATE OF THE CONSTRUCTION CONTRACT:

ENGINEER:

**NOTICE DATE:**

---

To: \_\_\_\_\_  
OWNER

And To: \_\_\_\_\_  
CONTRACTOR

From: \_\_\_\_\_  
ENGINEER

---

The Engineer hereby gives notice to the above Owner and Contractor that Engineer has recommended final payment of Contractor, and that the Work furnished and performed by Contractor under the above Construction Contract is acceptable, expressly subject to the provisions of the related Contract Documents, the Agreement between Owner and Engineer for Professional Services dated \_\_\_\_\_, \_\_\_\_\_, and the following terms and conditions of this Notice.

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**Exhibit E – Notice of Acceptability of Work**  
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**CONDITIONS OF NOTICE OF ACCEPTABILITY OF WORK**

The Notice of Acceptability of Work ("Notice") is expressly made subject to the following terms and conditions to which all persons who receive said Notice and rely thereon agree:

1. This Notice is given with the skill and care ordinarily used by members of the engineering profession practicing under similar conditions at the same time and in the same locality.
2. This Notice reflects and is an expression of the professional judgment of Engineer.
3. This Notice is given as to the best of Engineer's knowledge, information, and belief as of the Notice Date.
4. This Notice is based entirely on and expressly limited by the scope of services Engineer has been employed by Owner to perform or furnish during construction of the Specific Project (including observation of the Contractor's work) under Engineer's Agreement with Owner, and applies only to facts that are within Engineer's knowledge or could reasonably have been ascertained by Engineer as a result of carrying out the responsibilities specifically assigned to Engineer under such Agreement.
5. This Notice is not a guarantee or warranty of Contractor's performance under the Construction Contract, an acceptance of Work that is not in accordance with the related Contract Documents, including but not limited to defective Work discovered after final inspection, nor an assumption of responsibility for any failure of Contractor to furnish and perform the Work thereunder in accordance with the Construction Contract Documents, or to otherwise comply with the Construction Contract Documents or the terms of any special guarantees specified therein.
6. This Notice does not relieve Contractor of any surviving obligations under the Construction Contract, and is subject to Owner's reservations of rights with respect to completion and final payment.

By: \_\_\_\_\_  
\_\_\_\_\_

Title: \_\_\_\_\_  
\_\_\_\_\_

Dated: \_\_\_\_\_  
\_\_\_\_\_

This is **EXHIBIT F**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

**Construction Cost Limit  
(NOT USED)**

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This is **EXHIBIT G**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

**Insurance**

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Paragraph 6.05 of the Agreement is amended and supplemented to include the following agreement of the parties.

G6.05 *Insurance*

A. The limits of liability for the insurance required by Paragraphs 6.05.A and 6.05.B of the Agreement are as follows, unless and except as specifically modified by a specific Task Order:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Employer's Liability –
  - 1) Bodily injury, each accident: \$100,000
  - 2) Bodily injury by disease, each employee: \$100,000
  - 3) Bodily injury/disease, aggregate: \$200,000 \_\_\_\_\_
- c. General Liability –
  - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
  - 2) General Aggregate: \$2,000,000
- d. Excess or Umbrella Liability –
  - 1) Each Occurrence: \$2,000,000
  - 2) General Aggregate: \$4,000,000 \_\_\_\_\_
- e. Automobile Liability – Combined Single Limit (Bodily Injury and Property Damage): \$500,000
- f. Professional Liability –
  - 1) Each Claim Made: \$2,000,000
  - 2) Annual Aggregate: \$4,000,000

To maintain, and cause to maintain throughout the life of the contract and up until the completely constructed, Insurance for the Engineer and the named sub-consultants amounts and types specific

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Exhibit G – Insurance

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below which name the Guam Waterworks Authority as an insured for the project in a separate endorsement:

- 1.
- 2.
- 3.

**B. Additional Insureds:**

1. The following individuals or entities are to be included on Engineer's general liability policies of insurance as additional insureds:

**Guam Waterworks Authority**

---

**Exhibit G – Insurance**

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This is **EXHIBIT H**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

## **Dispute Resolution**

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Paragraph 6.09 of the Agreement is supplemented to include the following agreement of the parties:

### **H6.09 Dispute Resolution**

- A. *Mediation*: Owner and Engineer agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement, including any Task Order, or the breach thereof ("Disputes") to mediation by Owner and Engineer agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis, and shall be completed within 120 days. If such mediation is unsuccessful in resolving a Dispute, either party may seek to have the Dispute resolved by the laws of Guam or a court of competent jurisdiction, as applicable.

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**Exhibit H – Dispute Resolution**

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This is **EXHIBIT I**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

## **Limitations of Liability**

---

Paragraph 6.11 of the Agreement is supplemented to include the following agreement of the parties:

### **16.11.A Limitation of Engineer's Liability**

1. **Engineer's Liability Limited to Amount of Insurance Proceeds:** Engineer shall procure and maintain insurance as required by and set forth in Exhibit G to this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all claims, losses, costs, or damages whatsoever arising out of, resulting from, or in any way related to the Specific Project or the Task Order from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied, of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Engineer by Engineer's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Engineer's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal), up to the amount of insurance required under this Agreement. If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Engineer and Engineer's officers, directors, members, partners, agents, employees, and Consultants to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's Claims shall not exceed \$[ ].
- 

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#### **Exhibit I – Limitations of Liability**

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This is **EXHIBIT J**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated [ ].

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**Special Provisions  
(NOT USED)**

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**Exhibit J-Special Provisions**

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**Page 1**

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

**Amendment To Task Order No. \_\_\_\_\_**

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**1. Background Data:**

- a. Effective Date of Task Order:
- b. Owner:
- c. Engineer:
- d. Specific Project:

**2. Description of Modifications**

*[Include the following paragraphs that are applicable and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]*

- a. Engineer shall perform the following Additional Services: [ ]
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Task Order and previous amendments, if any, is modified as follows: [ ]
- c. The responsibilities of Owner with respect to the Task Order are modified as follows: [ ]
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation: [ ]
- e. The schedule for rendering services under this Task Order is modified as follows: [ ]
- f. Other portions of the Task Order (including previous amendments, if any) are modified as follows: [ ]

*[List other Attachments, if any]*

**3. Task Order Summary (Reference only)**

- a. Original Task Order amount:            \$[    ]
- b. Net change for prior amendments:    \$[    ]
- c. This amendment amount:                \$[    ]
- d. Adjusted Task Order amount:           \$[    ]

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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 \_\_\_\_\_.

OWNER:

ENGINEER:

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

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Exhibit L – Amendment to Task Order

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This is **EXHIBIT L**, consisting of [ ] pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services – Task Order Edition** dated [ ].

**Disclosure of Known Constituents of Concerns**

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Paragraph 6.10 of the Agreement is supplemented to include the following agreement of the parties.

**L6.10 Known Constituents of Concerns**

- A. Owner’s utility systems can be reasonably expected to contain the following Constituents of Concern: Per- and Poly-fluoroalkyl substances (PFOS/PFOA), Dieldrin, microorganisms, cleaning products, and medicines.
- B. In addition, the following list includes, to the best of Owner’s knowledge at date of this Task Order, existing Constituents of Concern at or adjacent to the Site:
  - 1. [Site #1 Name/Location]
    - a. [List all known Constituents of Concern]

## APPENDIX A

April 18, 2024



Jeanet Babauta, P.E.  
 Assistant General Manager - Engineering  
 Guam Waterworks Authority  
 Gloria B. Nelson Public Service Building  
 Route 15  
 Mangilao, GU 96913

GWA Project No. S22-02-BND

**Subject:** Revised Budget Proposal for Engineering Services of Task Order 1  
**Ref:** Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Island-wide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement

Dear Ms. Babauta:

Brown and Caldwell (BC) is pleased to submit the attached budget proposal for Task Order 1 of the referenced project in the amount of **\$989,532**. This total is comprised of a Lump Sum amount for Task Management and a part of the NASSCO training in the amount of \$104,642 and a Time and Materials based cost of \$884,890 to provide DB Contract Support, Tamuning/Tumon Hot Spots PM/CM, and the variable part of NASSCO training. Table 1 below summarizes the budget breakdown by each task of Task Order 1 and fee type. Attachment A provides further information for the budget of each subtask and Attachment B shows the breakdown of the Time and Materials portion of the budget.

Table 1. Task Order 1 Cost Breakdown			
Lump Sum			
Task	BC Fee	Subconsultant Fees	Total
1 - Task Management	\$69,921	\$0	\$69,921
3 - NASSCO Training	\$1,771	\$27,718	\$29,489
Lump Sum Total			\$99,410
Tax (5.263%)			\$5,232
<b>Lump Sum Grand Total Cost</b>			<b>\$104,642</b>
Time and Materials			
Task	BC Fee	Subconsultant Fees	Total
2 - ID/IQ DB Contract Support	\$49,714	\$0	\$49,714
3 - NASSCO Training	\$0	\$17,028	\$17,028
4 - Tamuning/Tumon Hotspots PM/CM	\$187,234	\$579,730	\$766,964
Expenses	\$6,941	-	\$6,941
T&M Total			\$840,647
Tax (5.263%)			\$44,243
<b>T&amp;M Grand Total Cost</b>			<b>\$884,890</b>
<b>Task Order 1 Grand Total (Lump Sum Grand Total + T&amp;M Grand Total)</b>			<b>\$989,532</b>

Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 2

The items below outline BC's assumptions and limitations for the tasks included in the scope of work (Attachment B).

- Task 2 - ID/IQ DB Contract Support
  - GWA will prepare the DB ID/IQ Contract from an EJCDC template for a DB ID/IQ.
  - BC will support and review GWA's draft ID/IQ DB Contract and provide consultation to define essential inclusion topics and objective for the DB contract.
  - BC will provide recommendations for revisions to GWA's draft DB ID/IQ contract.
  - BC will prepare the scope of work for the Tamuning/Tumon Hot Spots project.
  - BC will prepare the general scope of work for the remaining projects intended to be included in this ID/IQ DB contract that are currently in the planning stage.
  - BC, as requested by GWA, will support the procurement process, to include: supporting the pre-bid meeting, responding to RFIs, preparing addendums, reviewing and evaluating proposals, and preparing necessary resolution documents. Additional procurement support, such as re-bidding, can be provided at the request of GWA, within the budget approved by GWA.
- Task 3 - NASSCO Training
  - Cost assumes 12 students attending the PACP, LACP, MACP, and CIPP/ITCP training courses. Reductions or additions to the number of students attending will affect the T&M cost of this subtask by \$570 per student for the PACP, LACP, and MACP training, and \$720 per student for CIPP/ITCP training.
  - This task's budget is based on NASSCO's 2023 Training Fee with a 20% contingency to account for an anticipated increase in class cost for 2024 and assumes 12 attendees. BC will invoice this task based on the actual cost of the class and number of attendees.
- Task 4 - Tamuning/Tumon HS PM/CM
  - Contract period of 1.5 years from contractor NTP
  - Design and Constructability review:
    - One (1) site-visit will be conducted to compare existing conditions to site conditions indicated on the TGE plans. CCTV videos that were used by the EOR to develop the Tamuning/Tumon HS design documents will be reviewed. If GWA provides newer CCTV videos, BC will review them as well. Based on the age of the CCTV videos, it is possible that further deterioration and other defects may have developed that will not be known until either construction begins or new CCTV inspections are performed. BC cannot attest to the current condition of the existing pipe or the feasibility of CIPP installation based on review of dated CCTV.
    - The design review will be limited to an opinion of design suitability and feasibility of renovation method chosen based on CCTV available, noting the limitation above. The design review will consider completeness of contract plans and specifications documents.
    - If newer CCTV videos are available, the feasibility of the selected construction method to those captured conditions will be assessed.
    - BC will identify and provide to GWA recommendations to mitigate potential risks associated with the selected construction method for sewer replacement or rehabilitation.
    - Review of underground utilities is limited to identifying visible sewer service lateral connections in the CCTV videos. Other underground utility information will not be reviewed.



Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 3

- NEPA process is complete.
- EOR for the Tamuning-Tumon HS design will address all 1) design related RFIs; 2) design revision submittals; and 3) design change approvals, under separate contract between GWA and the EoR. BC will coordinate activity between DB contractor and EoR.
- Contractor will hire a third-party testing firm for specialized tests required (such as compaction density, CIPP liner, etc.), BC and EMPSCO to oversee field tests, as needed, and review test results for compliance.
- Contractor will prepare and furnish all necessary permits and plans to proceed with construction. BC will ensure permit requirements are followed during construction.
- Monthly and final reports will only include key project milestones and highlights.

The majority of the total task order cost outlined in Table 1 above is related to the construction management task, which are based on time and materials. Amount of effort required for the contract is difficult to estimate and can be variable. Further, level of effort and construction inspection can be customized and refined to GWA's preference if the level of effort assumed is different than GWA's intent.

The level of effort by BC in the development of the DB contract provisions focuses on advising the owner and reviewing draft documents produced by GWA from a EJCDC template for a DB ID/IQ contract. BC can provide the level of effort in this task (#2) as desired by GWA. It is limited in the proposed fee but can be raised to match GWA's need for assistance, as directed by GWA.

Lastly, this cost proposal does not include costs for ProCore Licensing and use. ProCore's pricing model is not fitting at this time without knowing the estimated annual construction cost for the projects to be included under the DB ID/IQ contract.

BC discussed the ProCore pricing structure with ProCore representatives so that we could provide a cost to GWA for this Task Order. We found that the price is based on two factors - first, the dollar value of the construction contract(s) that will utilize ProCore; and second, the duration of the contract(s) that will utilize ProCore. Therefore, for purposes of Task Order #1 fee proposal, BC would have to make an assumption about the ultimate cost of the entire DB ID/IQ contracts and their durations in order to provide a fee.

An assumption could result in GWA paying more than necessary or amending the TO fee after execution of the construction contract. In addition, for each Task Order, a fee for use of ProCore will be necessary. We have not included a cost for ProCore in this proposal believing that GWA will be better served (and more exactly assign cost) if ProCore is acquired by either A) making use of ProCore a DB contract requirement; or, B) adding ProCore to BC Task Order(s) once GWA issues Task Orders under the DB contract when price and duration of construction is established. I also note that ProCore is geared toward contractors' acquisition and use.

If you agree, we can proceed with option A or B described above, as you choose. If you would rather we include a price for ProCore at this time, please let us know and we can provide that quickly.

Please let me know if you would like to discuss any aspect of the scope of work or proposed fee. We look forward to beginning work on Task Order #1 and working with you to complete the scope of work.

Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 4

Very truly yours,

**Brown and Caldwell**

A handwritten signature in black ink, appearing to read 'JR' or similar initials, written in a cursive style.

John Riegel, Project Manager

Attachments (3)

1. Attachment A: Detailed fee breakdown
2. Attachment B: Time and Materials Breakdown
3. Attachment C: Task Order 1 Scope of Work

## **Attachment A: Detailed Fee Breakdown**

**Guam Waterworks Authority**  
**Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer**  
**Collection/Transmission System Repair, Rehabilitation, and Replacement**  
**GWA Project No. S22-02-BND**  
*Task Order No. 1 - DB ID/IQ Contract Development, NASSCO Training, Tamuning/Tumon Hotspots PM/CM*

<b>Grand total Lump Sum plus Time and Materials:</b>	<b>\$989,532</b>
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**Lump Sum Items**

**DB Contract Development and NASSCO Training**

Sub-Task	Description	BC Fee	Subconsultants	Subtotal
<b>1</b>	<b>Task Management</b>			
1.1	Coordination, progress reporting, invoicing, meetings	\$20,111	\$0	\$20,111
1.2	Scope Documentation (Risk Register, CO Log, etc.)	\$6,622	\$0	\$6,622
1.3	Scheduling	\$1,357	\$0	\$1,357
1.4	Subcontractor coordination	\$6,148	\$0	\$6,148
1.4	Internal coordination meetings	\$35,682	\$0	\$35,682
	<b>Sub-Task Totals</b>	<b>\$69,921</b>	<b>\$0</b>	<b>\$69,921</b>
<b>3</b>	<b>Education and Training</b>			
3.1	NASSCO Coordination and Logistics	\$1,771	\$0	\$1,771
3.2	NASSCO Training Plan and Instruction	\$0	\$27,718	\$27,718
	<b>Sub-Task Totals</b>	<b>\$1,771</b>	<b>\$27,718</b>	<b>\$29,489</b>
	<b>Total Lump Sum Items</b>	<b>\$71,691</b>	<b>\$27,718</b>	<b>\$99,410</b>
			Subtotal	\$99,410
			Tax	\$5,232
			<b>Grand Total LS</b>	<b>\$104,642</b>

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

*Task Order No. 1 - DB ID/IQ Contract Development, NASSCO Training, Tamuning/Tumon Hotspots PM/CM*

**T&M Items**

**Construction Support and T&M of NASSCO Training**

Sub-Task	Description	BC Fee	Subconsultants	Subtotal
<b>2</b>	<b>ID/IQ DB Contract Review</b>			
2.1	Meetings, coordination, correspondence	\$5,867	\$0	\$5,867
2.2	Develop Scope of Work for DB Contract			
2.2.1	Tamuning/Tumon HS	\$6,113	\$0	\$6,113
2.2.2	General SOW	\$6,113	\$0	\$6,113
2.3	Review and Assess DB RFP Package	\$18,659	\$0	\$18,659
2.4	Procurement Support			
2.4.1	Pre-Bid Meeting Support	\$1,954	\$0	\$1,954
2.4.2	Respond to RFIs	\$3,798	\$0	\$3,798
2.4.3	Prepare Addendums	\$2,798	\$0	\$2,798
2.4.4	Review and Evaluate proposals (includes ranking of proposals)	\$4,412	\$0	\$4,412
	<b>Sub-Task Totals</b>	<b>\$49,714</b>	<b>\$0</b>	<b>\$49,714</b>
<b>3</b>	<b>Education and Training</b>			
3.3	NASSCO PACP/MACP/LACP Certification	\$0	\$7,524	\$7,524
3.4	NASSCO ITCP/CIPP Certification	\$0	\$9,504	\$9,504
	<b>Sub-Task Totals</b>	<b>\$0</b>	<b>\$17,028</b>	<b>\$17,028</b>
<b>4</b>	<b>Tamuning/Tumon Hotspots Project and Construction Management</b>			
4.1	DB Contract Management (Change Orders, Invoicing, etc.)	\$10,190	\$0	\$10,190
4.3	Permit Development	\$11,886	\$0	\$11,886
4.4	Design and Constructibility Review	\$11,372	\$0	\$11,372
4.5	Subcontractor Expenses	\$0	\$27,781	\$27,781
4.6	PreConstruction		\$0	\$0
4.6.1	Pre-Con Meeting and Documentation	\$5,838	\$5,772	\$11,610
4.6.2	Pre-Con Submittal Reviews (schedule, submittal log, phasing plan, permits etc.)	\$6,282	\$19,707	\$25,989
4.7	Construction		\$0	\$0
4.7.1	Progress Meetings	\$26,544	\$19,386	\$45,929
4.7.2	Documentation (reports, as-builts, etc.)	\$7,167	\$28,325	\$35,492
4.7.3	Construction Coordination and Monitoring (schedule updates, progress tracking, permit compliance, RFIs)	\$19,947	\$101,970	\$121,917
4.7.4	Construction Invoice Review	\$5,090	\$33,990	\$39,080
4.7.5	Change Management (CCRs, claim negotiations, field orders)	\$22,035	\$36,071	\$58,106
4.7.6	Construction Inspection, including witnessing third-party testing, acceptance of work, non-conformance notice	\$23,135	\$215,270	\$238,405
4.7.7	Submittal Review	\$14,940	\$22,660	\$37,600
4.7.8	Contract reporting & documentation	\$5,347	\$0	\$5,347
4.7.9	As-builts	\$1,954	\$14,345	\$16,299
4.8	PostConstruction		\$0	\$0
4.8.1	Punch List development	\$1,995	\$20,373	\$22,368
4.8.2	Final Inspection	\$5,264	\$7,555	\$12,820
4.8.3	Contract Warranties	\$1,357	\$7,095	\$8,452
4.8.4	Final Construction Report	\$6,893	\$19,430	\$26,323
	<b>Sub-Task Totals</b>	<b>\$187,234</b>	<b>\$579,730</b>	<b>\$766,964</b>
	<b>Expenses (Time and Materials)</b>			
	Printing and electronic file assembly	\$5,500	-	\$5,500
	Mileage (2000miles at \$0.655/mile)	\$1,441	-	\$1,441
	<b>Expenses Totals</b>	<b>\$6,941</b>	<b>\$0</b>	<b>\$6,941</b>
	<b>Total T&amp;M Items</b>	<b>\$243,889</b>	<b>\$596,758</b>	<b>\$840,647</b>
			<b>Subtotal</b>	<b>\$840,647</b>
			<b>Tax</b>	<b>\$44,243</b>
			<b>Grand Total T&amp;M</b>	<b>\$884,890</b>
<b>Grand total Lump Sum plus Time and Materials:</b>				<b>\$989,532</b>



## **Attachment B: Time and Materials Breakdown**

Task 2 - ID/IQ DB Contract Support (T&M)						
Item	Description	BC Labor				Labor Cost
		Riegel	Claveria	Hrcir	Weber	
		\$318.76	\$169.65	\$320.32	\$294.32	
2.1	Meetings, Coordination, Correspondence	8	12	4	0	\$5,867
2.2	Develop Scope of Work for DB Contract					
2.2.1	Tamuning/Tumon HS	10	10	2	2	\$6,113
2.2.2	General SOW	10	10	2	2	\$6,113
2.3	Review and Assess DB RFP Package	8	8	24	24	\$18,659
2.4	Procurement Support					
2.4.1	Pre-Bid Meeting Support	4	4	0	0	\$1,954
2.4.2	Respond to RFIs	4	4	3	3	\$3,798
2.4.3	Prepare Addendums	0	2	4	4	\$2,798
2.4.4	Review and Evaluate Proposals (includes ranking of proposals)	4	4	4	4	\$4,412
Sub-Task Totals						\$49,714
Tax (5.263%)						\$2,616
Sub-Task Grand Total						\$52,330

Task 3 - NASSCO Training (T&M)							
Item	Description	BC Labor				Labor Cost	Subconsultants
		Riegel	Claveria	Hrcir	Weber		
		\$318.76	\$169.65	\$320.32	\$294.32		
3.3	NASSCO PACP/MACP/LACP Certification (\$570/person @ 12 pax)	0	0	0	0	\$0	\$6,840
3.4	NASSCO ITCP/CIPP Certification (\$720/person @ 12 pax)	0	0	0	0	\$0	\$8,640
10% Markup on Subconsultants						-	\$1,548
Sub-Task Totals						\$0	\$17,028
Tax (5.263%)							\$896
Sub-Task Grand Total							\$17,924



Task 4 - Tamuning/Tumon Hotspots Project and Construction Management							
Item	Description	BC Labor					Subconsultants
		Riegel	Claveria	Poppe	Heramil	Labor Cost	
		\$312.49	\$169.65	\$278.30	\$87.52		
4.1	DB Contract Management (Change Orders, Invoicing, etc.)	16	30			\$10,190	
4.2	ProCore Software						
4.3	Permit Development	16	40			\$11,886	
4.4	Subcontractor Expenses						\$25,256
4.5	PreConstruction						
4.5.1	Design and Constructability Review		40	16		\$11,372	
4.5.1	Pre-Con Meeting and Documentation	8	16	2		\$5,838	\$5,248
4.5.2	Pre-Con Submittal Reviews (schedule, submittal log, phasing plan, permits etc.)	4	16	8		\$6,282	\$17,915
4.6	Construction						
4.6.1	Progress Meetings	52	52	4		\$26,544	\$17,623
4.6.2	Documentation (reports, as-builts, etc.)	4	24		20	\$7,167	\$25,750
4.6.3	Construction Coordination and Monitoring (schedule updates, progress tracking, permit compliance, RFIs)	20	80			\$19,947	\$92,700
4.6.4	Construction Invoice Review		30			\$5,090	\$30,900
4.6.5	Change Management (CCRs, claim negotiations, field orders)	30	60	8		\$22,035	\$32,792
4.6.6	Construction Inspection, including witnessing third-party testing, acceptance of work, non-conformance notice	30	80			\$23,135	\$195,700
4.6.7	Submittal Review	4	40	24		\$14,940	\$20,600
4.6.8	Contract reporting & documentation	4	24			\$5,347	
4.6.9	As-builts	4	4			\$1,954	\$13,041
4.7	Post Construction						
4.7.1	Punch List development	2	8			\$1,995	\$18,521
4.7.2	Final Inspection	8	16			\$5,264	\$6,868
4.7.3	Contract Warranties		8			\$1,357	\$6,450
4.7.4	Final Construction Report	2	24		24	\$6,893	\$17,664
10% Markup on Subconsultants						-	\$52,703
Sub-Task Totals						\$187,234	\$579,730
Tax (5.263%)							\$40,365
Sub-Task Grand Total							\$807,329

Expenses				
Item	Qty	Unit	Rate	Cost
Printing and Electronic File Assembly	1	ea	\$5,000	\$5,000
Mileage	2000	mi	\$0.655	\$1,310
Expenses Total				\$6,310
Markup (10%)				\$631
Tax (5.263%)				\$365
Expenses Grand Total				\$7,306

## **Attachment C: Task Order 1 Scope of Work**

### **TASK ORDER #1 SCOPE OF WORK**

This Task Order #1 will be performed by Brown and Caldwell, herein referred to as "Engineer", under the **Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project** contract.

#### **Task 1: Task Management**

**Approach:** Engineer staff will manage the scope, schedule, and budget associated with the work described in this Task Order to ensure that this work is managed in a manner that meets contract requirements. This includes, but is not limited to, management of documents, change, risk, and quality assurance and control. This task shall include regular progress conference calls (at least every two weeks) or meetings between Engineer and GWA personnel to review project progress, issues to be resolved, early study results, etc. This task covers efforts associated with the internal quality control and technical review process. Specifically, the Engineer will conduct internal QA/QC meetings and follow-up with technical experts as necessary during the course of the project. Internal checking or peer review of all deliverables will also be performed.

**Engineer Team Responsibilities:** Engineer staff will manage the scope, schedule and budget.

**GWA Responsibilities:** GWA staff will attend meetings, review progress reports, and assist as necessary towards the construction project completion.

#### **Task 2: ID/IQ Design-Build Invitation for Bid Development**

**Approach:** Engineer staff will review all available information and work with GWA staff to develop the multi-step bid for a multi-award Progressive Design-Build ID/IQ for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project.

The work will include, but is not limited to:

- Conduct meetings and discussions with GWA staff on design-build (DB) contract provisions, as well as the goals and approach in DB RFP package.
- Develop, organize, and assemble a DB RFP package for GWA production.
- Submittal to GWA staff for comments, as well as review and edit of DB IFB package based on comments and discussion.
- Assist GWA staff with advertisement, pre-bid meeting(s), bid openings, review of bid packages to evaluate and rank qualified bidders, rebidding (if needed), and contracting as requested.

**Engineer Team Responsibilities:** Request and review documentation, meet with GWA staff, assist GWA to produce DB RFP, and assist as necessary throughout the procurement and bidding process. Prepare scope of work for Tumon and Tamuning Hot Spots Construction as part of the DB contract solicitation package.

**GWA Responsibilities:** Provide requested information, participate in meetings to develop and produce DB RFP. Draft DB contract package based on EJDC template for a DB ID/IQ contract for BC review and comment.

**Products:** Invitation for Bid for the Progressive Design-Build ID/IQ for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project.

**Task 3: NASSCO Certification Training**

**Approach:** Engineer will work with GWA staff and review training needs pertaining to the National Association of Sewer Service Companies (NASSCO) Certifications, develop a training plan, and implement the training as described in the training plan.

NASSCO Certifications include:

- Pipeline Assessment Certification Program (PACP)
- Manhole Assessment Certification Program (MACP)
- Lateral Assessment Certification Program (LACP)
- Inspector Training and Certification Program (ITCP) for the inspection of Cured-in-Place Pipe (CIPP) Installation

**Engineer Team Responsibilities:** Develop a training plan/curriculum and implement training identified as in training plan.

**GWA Responsibilities:** GWA staff will provide information requested and confirm training needs, attend classes, and arrange and provide training sources as necessary.

**Products:** NASSCO Training plan/curriculum and classes with associated certifications.

**Task 4: Tamuning/Tumon Hot Spots Project/Contract Management**

**Approach:** The Engineer will manage the project and contract for the Tumon and Tamuning Hot Spots construction project when GWA awards the Task Order to the successful DB firm. The Engineer will provide project management oversight and technical subject matter expertise for the subject project. The Engineer will perform contract management, monitor contractor work plans, attend meetings with USEPA, verify as-built drawings are being prepared by others, and submit final copies of work products to GWA and USEPA. The Engineer will perform Change Order management and provide advance notification of change conditions and budget category transfer request to USEPA and seek USEPA approvals. The Engineer will assist GWA in meeting Federal requirements and conformance compliance with Federal regulations.

Work to be performed may include, but are not limited to:

- a. Pre-Construction – the following elements of construction activity are required during the pre- construction stage of construction management. From the time of issuance of the Notice to Proceed (NTP for pre-construction activities prior to the issuance of DPW building permit), all duties listed in this section, at a minimum, shall be part of the CM’s daily duties within typical working hours. The consultant shall perform these tasks when required in a TO.
  - Conduct a design and constructability review of the Tumon and Tamuning Hot Spots design documents. This review shall be based on the CCTV data used by the EOR to develop the Tumon and Tamuning Hot Spots contract plans and specifications, or newer CCTV videos if available. This review shall consist of:
    - Evaluation of the completeness and accuracy of the design drawings,

- specifications, and other relevant documents.
  - Identifying potential conflicts, discrepancies, or ambiguities in the design.
  - Assess the constructability of the proposed design based on review of the CCTV data and site visits.
  - Evaluating the feasibility of construction activities, such as new pipe and CIPP installation.
  - Provide recommendations for updates to the Drawings and Specifications
- Attend the pre-construction conference with GWA and Contractor. Record notes of discussion, questions, answers, decisions, and other relevant items.
  - Conduct weekly/bi-weekly meetings, as needed, with GWA and the Contractor.
  - Review Contractor's schedule for sequencing, meeting the performance deadline, etc. Provide recommendation for approval to GWA.
  - Review Contractor's master submittal log.
  - Review contract material and design submittals for conformance with the specifications. Ensure all submittals are provided by the designer/contractor. Recommend approval or rejection (and why) of each submittal item. Design change submittals shall be sealed by the DB firm designer. The DB firm designer shall concur with all material substitutions. Review contractor's safety and traffic control plans. Recommend approval or rejection to GWA.
  - Review the Storm Water Pollution Prevention Plan for suitability and Recommend approval or rejection to GWA for submittal to GEPA.
  - Review all permits required for construction to proceed. Recommend approval or rejection to GWA for submittal to local regulatory agencies.
  - If added by GWA, set up and maintain ProCore Construction Management Software for the duration of the BC IDIQ contract.
- b. Construction - the following elements of construction activity are required during the construction stage of construction management. From the time of issuance of the NTP (after issuance of the DPW building permit), all duties listed in this section, at a minimum, shall be part of the CM and Inspectors daily duties within typical working hours.
- Monitor daily construction activities in compliance with the technical provisions of the contract, specifications, drawings, and applicable codes and regulations. Make daily site inspections during the course of the project to monitor construction related activities.
  - Witness and document all quality control testing by the Contractor.
  - If added by GWA, maintain a Construction Management Software (ProCore). All submittals shall be submitted through the management software. Daily activities shall be entered into the software.
  - Review quality assurance testing conducted by independent testing consultants, as required by the plans and specifications.
  - Review surveying performed under the DB Task Order.
  - Prepare general correspondence as requested by GWA.
  - Conduct Davis-Bacon interviews as requested by GWA, when applicable.
  - Review progress payment requests for accuracy and proper reflection of actual work performed and make recommendations to GWA regarding appropriateness and approval.

- Review contractor submitted payroll records for each payment request according to contract requirements.
  - Issue directives and corrective action notices dealing with quality of workmanship, non-compliance, and performance.
  - At GWA's request, prepare field orders to change specific scope of work requirements.
  - Monitor contractor's construction schedule and activities to ensure the contract/change order schedule is met. Review updated contractor's progress schedule and recommend approval, rejection, and corrective actions to GWA.
  - Verify contractor's material supply list with regard to delivery timetable, progress schedule, and justification for payment.
  - Analyze and participate in negotiating claims and contract change requests; recommend action deemed appropriate.
  - Prepare for GWA approval, change orders to modify the terms of the contract (change in cost, performance time, or technical provisions). With GWA's approval, review changes to the design made by the DB firm, as necessary.
  - Provide daily construction reports using the management software (ProCore), if added by GWA, which include pictures of construction highlighting on-going, finished, and deficient work, safety violations, examples of acceptable work, and other critical items. Pictures shall be clearly labeled and be taken before (to show existing conditions), during, and after construction.
  - Provide monthly construction reports to highlight accomplishments, milestones achieved, summarize construction activities and significant events, meetings, and review and comment on construction schedule status. Periodically provide updated construction schedule.
  - Maintain a set of As-Built drawings recording all installed facilities, deviations from the original plans, details of installation, encountered subsurface features and utilities, and critical dimensions. This set of As-Built drawings is to be separate from the Contractor's as-built drawing set to ensure the CM has their own set to check against the Contractor's set.
  - Conduct weekly (or otherwise specified interval) project meetings with the contractor and GWA to discuss work progress and any concerns relating to the construction.
  - Witness field tests performed by the construction contractor or his representative for compliance with the contract drawings and specifications.
  - Inspect construction, installation, and assemblage of work agreed to with GWA. Verify conformance to the contract provisions and check for acceptable workmanship. Report acceptable and unacceptable work to GWA, and, if added by GWA, file through the management software (ProCore).
  - Monitor and track the contractor's compliance with permits.
  - Monitor and track permit and insurance expiration dates.
  - Review contractor claims and provide recommendations to GWA.
- c. Post Construction – the following elements of construction activity are required during the post- construction stage of construction management.

- Lead the pre-final inspection and prepare a list of incomplete work to be completed before substantial completion.
- Determine the date of beneficial occupancy, and, substantial completion according to the contract terms.
- Lead the final inspection and prepare a punch list of deficiencies to be completed before final acceptance and final payment.
- Perform or observe all operational testing for proper operation, functionality, and performance. Accumulate all performance test data and submit to GWA.
- Verify all debris removal and clean-up is done.
- Verify final quantities installed and note differences from the estimated contract amount.
- Accumulate and provide to GWA all records, documents, submittals, log books, files, test results, etc.
- Review contract required warranties, O&M manuals, etc. and verify full compliance by the contractor.
- Provide a final review of construction contractor's as-built drawings and transmit the as-built drawings to GWA.
- Provide CM's as-built drawings and transmit to GWA.
- Prepare a final construction report summarizing construction activities and issues.

**Engineer Team Responsibilities:** Manage the project and contract associated with the Tumon and Tamuning Hot Spots construction project in accordance with the Grant Conditions (Appendix B).

**GWA Responsibilities:** Provide completed design (drawings, specifications, bid schedule, and related provisions completed by the Tumon and Tamuning Hot Spots designer) for the Tumon and Tamuning Hot Spots construction project that are to be part of the DB IDIQ Task Order concurrent with and managed by this Task Order #1. Provide information, when available, as requested by the Engineer and participate in meetings and reviews of project progress. Provide CCTV data used to develop the Tumon and Tamuning Hotspots design documents.

**Products:** Project documentation



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

OWNER: Guam Waterworks Authority

ENGINEER:

By: \_\_\_\_\_

By: \_\_\_\_\_

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

Print Name:  John Riegel

Title: General Manager

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:

By: \_\_\_\_\_

By: \_\_\_\_\_

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

THERESA G. ROJAS, ESQ.  
GWA Legal Counsel

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

## Exhibit B

### 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. [01], consisting of \_\_\_ pages.

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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: 7/12/24
- b. Owner: Guam Waterworks Authority
- c. Engineer: Brown and Caldwell
- d. Specific Project (title): Design-Build ID/IQ Contract Development, NASSCO Training, Tamuning/Tumon Hot Spots PM/CM
- e. Specific Project (description): Provide GWA with Design-Build contract development support, design review, project and construction management services for the Tamuning/Tumon Hot Spots project, and NASSCO Training.

#### 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 – April 18, 2024, Brown and Caldwell, Task Order No. 1 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:

<u>Party</u>	<u>Action</u>	<u>Schedule</u>
Engineer	Conduct meetings and Assist Owner with Design-Build Contract Development, including organize and assemble Design-Build package, and submit for Owner comments.	Within 90 days of effective Date of Task Order
Engineer	Complete Constructability Review of Tamuning/Tumon Hot Spots Design and provide comments to Owner.	Within 30 days of effective Date of Task Order.
Owner	Submit comments regarding Design-Build package to Engineer.	Within 14 days of receipt of Design-Build Package from Engineer.
Owner	Submit comments and instructions regarding the Tamuning/Tumon Hot Spots Design to Engineer.	Within 14 days of receipt of Tamuning/Tumon Hot Spots Design comments from Engineer.
Engineer	Schedule and Provide NASSCO Training to Owner.	Within 180 days of effective Date of Task Order.
Engineer	Complete Pre-Construction, Construction and Closeout Phases for Tamuning/Tumon Hot Spots as described in ATTACHMENT A.	Within 360 days of Notice to Proceed for Pre-Construction, Construction, and Closeout Phases

**6. Payments to Engineer**

A. Owner shall pay Engineer for services rendered under this Task Order based on the attached approved Task Order No. 01 Scope of Work and Fee

Description of Service	Amount	Basis of Compensation
1. Task Management	\$69,921.00	Lump Sum
2. ID/IQ DB Contract Support	\$49,714.00	Time and Materials
3. NASSCO Training		
i) Coordination, Logistics, Training Plan	\$29,489.00	Lump Sum
ii) NASSCO Certification	\$17,028.00	Time and Materials
4. Tamuning/Tumon Hot Spots PM/CM		

i) PM/CM	\$755,592.00	Time and Materials
ii) Design and Constructability Review	\$11,372.00	Time and Materials
Expenses	\$6,941.00	Time and Materials
GRT (5.263%)	\$49,475.00	
<b>TOTAL COMPENSATION</b>	<b>\$989,532.00</b>	

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 – April 18, 2024, Brown and Caldwell, Task Order No. 1 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:   
7/12/24

By: 

Print Name: <sup>For</sup> MIGUEL C. BORDALLO, P.E.

Print Name: John Riegel

Title: General Manager

Title: Sr. Program Manager

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

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

DESIGNATED REPRESENTATIVE FOR TASK ORDER:

Name: \_\_\_\_\_

Name: Joseph Claveria, P.E.

Title: \_\_\_\_\_

Title: Project Manager

Address: \_\_\_\_\_

Address: Brown and Caldwell  
414 West Soledad Ave  
STE 602, GCIC Bldg  
Hagatna, GU 96910


E-Mail Address: \_\_\_\_\_

Email Address: jclaveria@brwnald.com

Phone: \_\_\_\_\_

Phone: 671-300-4227

Engineering Department Approval:

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

Certified Funds Available:

By: Talino 7/11/2024  
TALING M. TAITANO, CPA, CGFM  
GWA Chief Financial Officer  
7/11/24  
7/11/24

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

Approved as to Form:

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

Contract Amount: \$ 989,532.00

Contingency: \$ \_\_\_\_\_

Amount Certified: \$ 989,532.00

Funding Source: ~~USEPA Grant M96902621~~

BOND 2020 MP-NW-PIPE-01  
AS PLACEHOLDER. [Signature]  
7/11/24

## ATTACHMENT A

April 18, 2024



Jeanet Babauta, P.E.  
 Assistant General Manager - Engineering  
 Guam Waterworks Authority  
 Gloria B. Nelson Public Service Building  
 Route 15  
 Mangilao, GU 96913

GWA Project No. S22-02-BND

**Subject:** Revised Budget Proposal for Engineering Services of Task Order 1  
**Ref:** Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Island-wide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement

Dear Ms. Babauta:

Brown and Caldwell (BC) is pleased to submit the attached budget proposal for Task Order 1 of the referenced project in the amount of **\$989,532**. This total is comprised of a Lump Sum amount for Task Management and a part of the NASSCO training in the amount of \$104,642 and a Time and Materials based cost of \$884,890 to provide DB Contract Support, Tamuning/Tumon Hot Spots PM/CM, and the variable part of NASSCO training. Table 1 below summarizes the budget breakdown by each task of Task Order 1 and fee type. Attachment A provides further information for the budget of each subtask and Attachment B shows the breakdown of the Time and Materials portion of the budget.

Table 1. Task Order 1 Cost Breakdown			
Lump Sum			
Task	BC Fee	Subconsultant Fees	Total
1 - Task Management	\$69,921	\$0	\$69,921
3 - NASSCO Training	\$1,771	\$27,718	\$29,489
<b>Lump Sum Total</b>			<b>\$99,410</b>
Tax (5.263%)			\$5,232
<b>Lump Sum Grand Total Cost</b>			<b>\$104,642</b>
Time and Materials			
Task	BC Fee	Subconsultant Fees	Total
2 - ID/IQ DB Contract Support	\$49,714	\$0	\$49,714
3 - NASSCO Training	\$0	\$17,028	\$17,028
4 - Tamuning/Tumon Hotspots PM/CM	\$187,234	\$579,730	\$766,964
Expenses	\$6,941	-	\$6,941
<b>T&amp;M Total</b>			<b>\$840,647</b>
Tax (5.263%)			\$44,243
<b>T&amp;M Grand Total Cost</b>			<b>\$884,890</b>
<b>Task Order 1 Grand Total (Lump Sum Grand Total + T&amp;M Grand Total)</b>			<b>\$989,532</b>

Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 2

The items below outline BC's assumptions and limitations for the tasks included in the scope of work (Attachment B).

- Task 2 - ID/IQ DB Contract Support
  - GWA will prepare the DB ID/IQ Contract from an EJCDC template for a DB ID/IQ.
  - BC will support and review GWA's draft ID/IQ DB Contract and provide consultation to define essential inclusion topics and objective for the DB contract.
  - BC will provide recommendations for revisions to GWA's draft DB ID/IQ contract.
  - BC will prepare the scope of work for the Tamuning/Tumon Hot Spots project.
  - BC will prepare the general scope of work for the remaining projects intended to be included in this ID/IQ DB contract that are currently in the planning stage.
  - BC, as requested by GWA, will support the procurement process, to include: supporting the pre-bid meeting, responding to RFIs, preparing addendums, reviewing and evaluating proposals, and preparing necessary resolution documents. Additional procurement support, such as re-bidding, can be provided at the request of GWA, within the budget approved by GWA.
- Task 3 - NASSCO Training
  - Cost assumes 12 students attending the PACP, LACP, MACP, and CIPP/ITCP training courses. Reductions or additions to the number of students attending will affect the T&M cost of this subtask by \$570 per student for the PACP, LACP, and MACP training, and \$720 per student for CIPP/ITCP training.
  - This task's budget is based on NASSCO's 2023 Training Fee with a 20% contingency to account for an anticipated increase in class cost for 2024 and assumes 12 attendees. BC will invoice this task based on the actual cost of the class and number of attendees.
- Task 4 - Tamuning/Tumon HS PM/CM
  - Contract period of 1.5 years from contractor NTP
  - Design and Constructability review:
    - One (1) site-visit will be conducted to compare existing conditions to site conditions indicated on the TGE plans. CCTV videos that were used by the EOR to develop the Tamuning/Tumon HS design documents will be reviewed. If GWA provides newer CCTV videos, BC will review them as well. Based on the age of the CCTV videos, it is possible that further deterioration and other defects may have developed that will not be known until either construction begins or new CCTV inspections are performed. BC cannot attest to the current condition of the existing pipe or the feasibility of CIPP installation based on review of dated CCTV.
    - The design review will be limited to an opinion of design suitability and feasibility of renovation method chosen based on CCTV available, noting the limitation above. The design review will consider completeness of contract plans and specifications documents.
    - If newer CCTV videos are available, the feasibility of the selected construction method to those captured conditions will be assessed.
    - BC will identify and provide to GWA recommendations to mitigate potential risks associated with the selected construction method for sewer replacement or rehabilitation.
    - Review of underground utilities is limited to identifying visible sewer service lateral connections in the CCTV videos. Other underground utility information will not be reviewed.



Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 3

- NEPA process is complete.
- EOR for the Tamuning-Tumon HS design will address all 1) design related RFIs; 2) design revision submittals; and 3) design change approvals, under separate contract between GWA and the EoR. BC will coordinate activity between DB contractor and EoR.
- Contractor will hire a third-party testing firm for specialized tests required (such as compaction density, CIPP liner, etc.), BC and EMPSCO to oversee field tests, as needed, and review test results for compliance.
- Contractor will prepare and furnish all necessary permits and plans to proceed with construction. BC will ensure permit requirements are followed during construction.
- Monthly and final reports will only include key project milestones and highlights.

The majority of the total task order cost outlined in Table 1 above is related to the construction management task, which are based on time and materials. Amount of effort required for the contract is difficult to estimate and can be variable. Further, level of effort and construction inspection can be customized and refined to GWA's preference if the level of effort assumed is different than GWA's intent.

The level of effort by BC in the development of the DB contract provisions focuses on advising the owner and reviewing draft documents produced by GWA from a EJCDC template for a DB ID/IQ contract. BC can provide the level of effort in this task (#2) as desired by GWA. It is limited in the proposed fee but can be raised to match GWA's need for assistance, as directed by GWA.

Lastly, this cost proposal does not include costs for ProCore Licensing and use. ProCore's pricing model is not fitting at this time without knowing the estimated annual construction cost for the projects to be included under the DB ID/IQ contract.

BC discussed the ProCore pricing structure with ProCore representatives so that we could provide a cost to GWA for this Task Order. We found that the price is based on two factors - first, the dollar value of the construction contract(s) that will utilize ProCore; and second, the duration of the contract(s) that will utilize ProCore. Therefore, for purposes of Task Order #1 fee proposal, BC would have to make an assumption about the ultimate cost of the entire DB ID/IQ contracts and their durations in order to provide a fee.

An assumption could result in GWA paying more than necessary or amending the TO fee after execution of the construction contract. In addition, for each Task Order, a fee for use of ProCore will be necessary. We have not included a cost for ProCore in this proposal believing that GWA will be better served (and more exactly assign cost) if ProCore is acquired by either A) making use of ProCore a DB contract requirement; or, B) adding ProCore to BC Task Order(s) once GWA issues Task Orders under the DB contract when price and duration of construction is established. I also note that ProCore is geared toward contractors' acquisition and use.

If you agree, we can proceed with option A or B described above, as you choose. If you would rather we include a price for ProCore at this time, please let us know and we can provide that quickly.

Please let me know if you would like to discuss any aspect of the scope of work or proposed fee. We look forward to beginning work on Task Order #1 and working with you to complete the scope of work.

Jeanet Babauta, P.E.  
Guam Waterworks Authority  
April 18, 2024  
Page 4

Very truly yours,

**Brown and Caldwell**

A handwritten signature in black ink, appearing to be 'JR' or similar initials, written in a cursive style.

John Riegel, Project Manager

Attachments (3)

1. Attachment A: Detailed fee breakdown
2. Attachment B: Time and Materials Breakdown
3. Attachment C: Task Order 1 Scope of Work

## **Attachment A: Detailed Fee Breakdown**

**Guam Waterworks Authority**  
**Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer**  
**Collection/Transmission System Repair, Rehabilitation, and Replacement**  
**GWA Project No. S22-02-BND**  
*Task Order No. 1 - DB ID/IQ Contract Development, NASSCO Training, Tamuning/Tumon Hotspots PM/CM*

<b>Grand total Lump Sum plus Time and Materials:</b>	<b>\$989,532</b>
--	------------------

**Lump Sum Items**

**DB Contract Development and NASSCO Training**

Sub-Task	Description	BC Fee	Subconsultants	Subtotal
<b>1</b>	<b>Task Management</b>			
1.1	Coordination, progress reporting, invoicing, meetings	\$20,111	\$0	\$20,111
1.2	Scope Documentation (Risk Register, CO Log, etc.)	\$6,622	\$0	\$6,622
1.3	Scheduling	\$1,357	\$0	\$1,357
1.4	Subcontractor coordination	\$6,148	\$0	\$6,148
1.4	Internal coordination meetings	\$35,682	\$0	\$35,682
<b>Sub-Task Totals</b>		<b>\$69,921</b>	<b>\$0</b>	<b>\$69,921</b>
<b>3</b>	<b>Education and Training</b>			
3.1	NASSCO Coordination and Logistics	\$1,771	\$0	\$1,771
3.2	NASSCO Training Plan and Instruction	\$0	\$27,718	\$27,718
<b>Sub-Task Totals</b>		<b>\$1,771</b>	<b>\$27,718</b>	<b>\$29,489</b>
<b>Total Lump Sum Items</b>		<b>\$71,691</b>	<b>\$27,718</b>	<b>\$99,410</b>
			Subtotal	\$99,410
			Tax	\$5,232
			<b>Grand Total LS</b>	<b>\$104,642</b>

**Guam Waterworks Authority**  
**Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer**  
**Collection/Transmission System Repair, Rehabilitation, and Replacement**  
**GWA Project No. S22-02-BND**  
*Task Order No. 1 - DB ID/IQ Contract Development, NASSCO Training, Tamuning/Tumon Hotspots PM/CM*

**T&M Items**

**Construction Support and T&M of NASSCO Training**

Sub-Task	Description	BC Fee	Subconsultants	Subtotal
<b>2</b>	<b>ID/IQ DB Contract Review</b>			
2.1	Meetings, coordination, correspondence	\$5,867	\$0	\$5,867
2.2	Develop Scope of Work for DB Contract			
2.2.1	Tamuning/Tumon HS	\$6,113	\$0	\$6,113
2.2.2	General SOW	\$6,113	\$0	\$6,113
2.3	Review and Assess DB RFP Package	\$18,659	\$0	\$18,659
2.4	Procurement Support			
2.4.1	Pre-Bid Meeting Support	\$1,954	\$0	\$1,954
2.4.2	Respond to RFIs	\$3,798	\$0	\$3,798
2.4.3	Prepare Addendums	\$2,798	\$0	\$2,798
2.4.4	Review and Evaluate proposals (includes ranking of proposals)	\$4,412	\$0	\$4,412
<b>Sub-Task Totals</b>		<b>\$49,714</b>	<b>\$0</b>	<b>\$49,714</b>
<b>3</b>	<b>Education and Training</b>			
3.3	NASSCO PACP/MACP/LACP Certification	\$0	\$7,524	\$7,524
3.4	NASSCO ITCP/CIPP Certification	\$0	\$9,504	\$9,504
<b>Sub-Task Totals</b>		<b>\$0</b>	<b>\$17,028</b>	<b>\$17,028</b>
<b>4</b>	<b>Tamuning/Tumon Hotspots Project and Construction Management</b>			
4.1	DB Contract Management (Change Orders, Invoicing, etc.)	\$10,190	\$0	\$10,190
4.3	Permit Development	\$11,886	\$0	\$11,886
4.4	Design and Constructibility Review	\$11,372	\$0	\$11,372
4.5	Subcontractor Expenses	\$0	\$27,781	\$27,781
4.6	PreConstruction		\$0	\$0
4.6.1	Pre-Con Meeting and Documentation	\$5,838	\$5,772	\$11,610
4.6.2	Pre-Con Submittal Reviews (schedule, submittal log, phasing plan, permits etc.)	\$6,282	\$19,707	\$25,989
4.7	Construction		\$0	\$0
4.7.1	Progress Meetings	\$26,544	\$19,386	\$45,929
4.7.2	Documentation (reports, as-builts, etc.)	\$7,167	\$28,325	\$35,492
4.7.3	Construction Coordination and Monitoring (schedule updates, progress tracking, permit compliance, RFIs)	\$19,947	\$101,970	\$121,917
4.7.4	Construction Invoice Review	\$5,090	\$33,990	\$39,080
4.7.5	Change Management (CCRs, claim negotiations, field orders)	\$22,035	\$36,071	\$58,106
4.7.6	Construction Inspection, including witnessing third-party testing, acceptance of work, non-conformance notice	\$23,135	\$215,270	\$238,405
4.7.7	Submittal Review	\$14,940	\$22,660	\$37,600
4.7.8	Contract reporting & documentation	\$5,347	\$0	\$5,347
4.7.9	As-builts	\$1,954	\$14,345	\$16,299
4.8	PostConstruction		\$0	\$0
4.8.1	Punch List development	\$1,995	\$20,373	\$22,368
4.8.2	Final Inspection	\$5,264	\$7,555	\$12,820
4.8.3	Contract Warranties	\$1,357	\$7,095	\$8,452
4.8.4	Final Construction Report	\$6,893	\$19,430	\$26,323
<b>Sub-Task Totals</b>		<b>\$187,234</b>	<b>\$579,730</b>	<b>\$766,964</b>
<b>Expenses (Time and Materials)</b>				
	Printing and electronic file assembly	\$5,500	-	\$5,500
	Mileage (2000miles at \$0.655/mile)	\$1,441	-	\$1,441
<b>Expenses Totals</b>		<b>\$6,941</b>	<b>\$0</b>	<b>\$6,941</b>
<b>Total T&amp;M Items</b>		<b>\$243,889</b>	<b>\$596,758</b>	<b>\$840,647</b>
		<b>Subtotal</b>		<b>\$840,647</b>
		<b>Tax</b>		<b>\$44,243</b>
		<b>Grand Total T&amp;M</b>		<b>\$884,890</b>
<b>Grand total Lump Sum plus Time and Materials:</b>				<b>\$989,532</b>



## **Attachment B: Time and Materials Breakdown**

Task 2 - ID/IQ DB Contract Support (T&M)						
Item	Description	BC Labor				Labor Cost
		Riegel	Claveria	Hrncir	Weber	
		\$318.76	\$169.65	\$320.32	\$294.32	
2.1	Meetings, Coordination, Correspondence	8	12	4	0	\$5,867
2.2	Develop Scope of Work for DB Contract					
2.2.1	Tamuning/Tumon HS	10	10	2	2	\$6,113
2.2.2	General SOW	10	10	2	2	\$6,113
2.3	Review and Assess DB RFP Package	8	8	24	24	\$18,659
2.4	Procurement Support					
2.4.1	Pre-Bid Meeting Support	4	4	0	0	\$1,954
2.4.2	Respond to RFIs	4	4	3	3	\$3,798
2.4.3	Prepare Addendums	0	2	4	4	\$2,798
2.4.4	Review and Evaluate Proposals (includes ranking of proposals)	4	4	4	4	\$4,412
<b>Sub-Task Totals</b>						<b>\$49,714</b>
<b>Tax (5.263%)</b>						<b>\$2,616</b>
<b>Sub-Task Grand Total</b>						<b>\$52,330</b>

Task 3 - NASSCO Training (T&M)							
Item	Description	BC Labor				Labor Cost	Subconsultants
		Riegel	Claveria	Hrncir	Weber		
		\$318.76	\$169.65	\$320.32	\$294.32		
3.3	NASSCO PACP/MACP/LACP Certification (\$570/person @ 12 pax)	0	0	0	0	\$0	\$6,840
3.4	NASSCO ITCP/CIPP Certification (\$720/person @ 12 pax)	0	0	0	0	\$0	\$8,640
<b>10% Markup on Subconsultants</b>						-	\$1,548
<b>Sub-Task Totals</b>						<b>\$0</b>	<b>\$17,028</b>
<b>Tax (5.263%)</b>							<b>\$896</b>
<b>Sub-Task Grand Total</b>							<b>\$17,924</b>



Task 4 - Tamuning/Tumon Hotspots Project and Construction Management							
Item	Description	BC Labor				Labor Cost	Subconsultants
		Riegel	Claveria	Poppe	Heramil		
		\$312.49	\$169.65	\$278.30	\$87.52		
4.1	DB Contract Management (Change Orders, Invoicing, etc.)	16	30			\$10,190	
4.2	ProCore Software						
4.3	Permit Development	16	40			\$11,886	
4.4	Subcontractor Expenses						\$25,256
4.5	PreConstruction						
4.5.1	Design and Constructability Review		40	16		\$11,372	
4.5.1	Pre-Con Meeting and Documentation	8	16	2		\$5,838	\$5,248
4.5.2	Pre-Con Submittal Reviews (schedule, submittal log, phasing plan, permits etc.)	4	16	8		\$6,282	\$17,915
4.6	Construction						
4.6.1	Progress Meetings	52	52	4		\$26,544	\$17,623
4.6.2	Documentation (reports, as-builts, etc.)	4	24		20	\$7,167	\$25,750
4.6.3	Construction Coordination and Monitoring (schedule updates, progress tracking, permit compliance, RFIs)	20	80			\$19,947	\$92,700
4.6.4	Construction Invoice Review		30			\$5,090	\$30,900
4.6.5	Change Management (CCRs, claim negotiations, field orders)	30	60	8		\$22,035	\$32,792
4.6.6	Construction Inspection, including witnessing third-party testing, acceptance of work, non-conformance notice	30	80			\$23,135	\$195,700
4.6.7	Submittal Review	4	40	24		\$14,940	\$20,600
4.6.8	Contract reporting & documentation	4	24			\$5,347	
4.6.9	As-builts	4	4			\$1,954	\$13,041
4.7	Post Construction						
4.7.1	Punch List development	2	8			\$1,995	\$18,521
4.7.2	Final Inspection	8	16			\$5,264	\$6,868
4.7.3	Contract Warranties		8			\$1,357	\$6,450
4.7.4	Final Construction Report	2	24		24	\$6,893	\$17,664
						10% Markup on Subconsultants	\$52,703
						Sub-Task Totals	\$187,234
						Tax (5.263%)	\$40,365
						Sub-Task Grand Total	\$807,329

Expenses				
Item	Qty	Unit	Rate	Cost
Printing and Electronic File Assembly	1	ea	\$5,000	\$5,000
Mileage	2000	mi	\$0.655	\$1,310
Expenses Total				\$6,310
Markup (10%)				\$631
Tax (5.263%)				\$365
Expenses Grand Total				\$7,306

## **Attachment C: Task Order 1 Scope of Work**

### **TASK ORDER #1 SCOPE OF WORK**

This Task Order #1 will be performed by Brown and Caldwell, herein referred to as “Engineer”, under the **Indefinite Delivery/Indefinite Quantity (ID/IQ) Professional Project/Construction Management for Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project** contract.

#### **Task 1: Task Management**

**Approach:** Engineer staff will manage the scope, schedule, and budget associated with the work described in this Task Order to ensure that this work is managed in a manner that meets contract requirements. This includes, but is not limited to, management of documents, change, risk, and quality assurance and control. This task shall include regular progress conference calls (at least every two weeks) or meetings between Engineer and GWA personnel to review project progress, issues to be resolved, early study results, etc. This task covers efforts associated with the internal quality control and technical review process. Specifically, the Engineer will conduct internal QA/QC meetings and follow-up with technical experts as necessary during the course of the project. Internal checking or peer review of all deliverables will also be performed.

**Engineer Team Responsibilities:** Engineer staff will manage the scope, schedule and budget.

**GWA Responsibilities:** GWA staff will attend meetings, review progress reports, and assist as necessary towards the construction project completion.

#### **Task 2: ID/IQ Design-Build Invitation for Bid Development**

**Approach:** Engineer staff will review all available information and work with GWA staff to develop the multi- step bid for a multi-award Progressive Design-Build ID/IQ for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project.

The work will include, but is not limited to:

- Conduct meetings and discussions with GWA staff on design-build (DB) contract provisions, as well as the goals and approach in DB RFP package.
- Develop, organize, and assemble a DB RFP package for GWA production.
- Submittal to GWA staff for comments, as well as review and edit of DB IFB package based on comments and discussion.
- Assist GWA staff with advertisement, pre-bid meeting(s), bid openings, review of bid packages to evaluate and rank qualified bidders, rebidding (if needed), and contracting as requested.

**Engineer Team Responsibilities:** Request and review documentation, meet with GWA staff, assist GWA to produce DB RFP, and assist as necessary throughout the procurement and bidding process. Prepare scope of work for Tumon and Tamuning Hot Spots Construction as part of the DB contract solicitation package.

**GWA Responsibilities:** Provide requested information, participate in meetings to develop and produce DB RFP. Draft DB contract package based on EJDC template for a DB ID/IQ contract for BC review and comment.

**Products:** Invitation for Bid for the Progressive Design-Build ID/IQ for the Islandwide Sewer Collection/Transmission System Repair, Rehabilitation, and Replacement Project.

**Task 3: NASSCO Certification Training**

**Approach:** Engineer will work with GWA staff and review training needs pertaining to the National Association of Sewer Service Companies (NASSCO) Certifications, develop a training plan, and implement the training as described in the training plan.

NASSCO Certifications include:

- Pipeline Assessment Certification Program (PACP)
- Manhole Assessment Certification Program (MACP)
- Lateral Assessment Certification Program (LACP)
- Inspector Training and Certification Program (ITCP) for the inspection of Cured-in-Place Pipe (CIPP) Installation

**Engineer Team Responsibilities:** Develop a training plan/curriculum and implement training identified as in training plan.

**GWA Responsibilities:** GWA staff will provide information requested and confirm training needs, attend classes, and arrange and provide training sources as necessary.

**Products:** NASSCO Training plan/curriculum and classes with associated certifications.

**Task 4: Tamuning/Tumon Hot Spots Project/Contract Management**

**Approach:** The Engineer will manage the project and contract for the Tumon and Tamuning Hot Spots construction project when GWA awards the Task Order to the successful DB firm. The Engineer will provide project management oversight and technical subject matter expertise for the subject project. The Engineer will perform contract management, monitor contractor work plans, attend meetings with USEPA, verify as-built drawings are being prepared by others, and submit final copies of work products to GWA and USEPA. The Engineer will perform Change Order management and provide advance notification of change conditions and budget category transfer request to USEPA and seek USEPA approvals. The Engineer will assist GWA in meeting Federal requirements and conformance compliance with Federal regulations.

Work to be performed may include, but are not limited to:

- a. Pre-Construction – the following elements of construction activity are required during the pre-construction stage of construction management. From the time of issuance of the Notice to Proceed (NTP for pre-construction activities prior to the issuance of DPW building permit), all duties listed in this section, at a minimum, shall be part of the CM's daily duties within typical working hours. The consultant shall perform these tasks when required in a TO.
  - Conduct a design and constructability review of the Tumon and Tamuning Hot Spots design documents. This review shall be based on the CCTV data used by the EOR to develop the Tumon and Tamuning Hot Spots contract plans and specifications, or newer CCTV videos if available. This review shall consist of:
    - Evaluation of the completeness and accuracy of the design drawings,

- specifications, and other relevant documents.
    - Identifying potential conflicts, discrepancies, or ambiguities in the design.
    - Assess the constructability of the proposed design based on review of the CCTV data and site visits.
    - Evaluating the feasibility of construction activities, such as new pipe and CIPP installation.
    - Provide recommendations for updates to the Drawings and Specifications
  - Attend the pre-construction conference with GWA and Contractor. Record notes of discussion, questions, answers, decisions, and other relevant items.
  - Conduct weekly/bi-weekly meetings, as needed, with GWA and the Contractor.
  - Review Contractor’s schedule for sequencing, meeting the performance deadline, etc. Provide recommendation for approval to GWA.
  - Review Contractor’s master submittal log.
  - Review contract material and design submittals for conformance with the specifications. Ensure all submittals are provided by the designer/contractor. Recommend approval or rejection (and why) of each submittal item. Design change submittals shall be sealed by the DB firm designer. The DB firm designer shall concur with all material substitutions. Review contractor’s safety and traffic control plans. Recommend approval or rejection to GWA.
  - Review the Storm Water Pollution Prevention Plan for suitability and Recommend approval or rejection to GWA for submittal to GEPA.
  - Review all permits required for construction to proceed. Recommend approval or rejection to GWA for submittal to local regulatory agencies.
  - If added by GWA, set up and maintain ProCore Construction Management Software for the duration of the BC IDIQ contract.
- b. Construction - the following elements of construction activity are required during the construction stage of construction management. From the time of issuance of the NTP (after issuance of the DPW building permit), all duties listed in this section, at a minimum, shall be part of the CM and Inspectors daily duties within typical working hours.
- Monitor daily construction activities in compliance with the technical provisions of the contract, specifications, drawings, and applicable codes and regulations. Make daily site inspections during the course of the project to monitor construction related activities.
  - Witness and document all quality control testing by the Contractor.
  - If added by GWA, maintain a Construction Management Software (ProCore). All submittals shall be submitted through the management software. Daily activities shall be entered into the software.
  - Review quality assurance testing conducted by independent testing consultants, as required by the plans and specifications.
  - Review surveying performed under the DB Task Order.
  - Prepare general correspondence as requested by GWA.
  - Conduct Davis-Bacon interviews as requested by GWA, when applicable.
  - Review progress payment requests for accuracy and proper reflection of actual work performed and make recommendations to GWA regarding appropriateness and approval.

- Review contractor submitted payroll records for each payment request according to contract requirements.
  - Issue directives and corrective action notices dealing with quality of workmanship, non-compliance, and performance.
  - At GWA's request, prepare field orders to change specific scope of work requirements.
  - Monitor contractor's construction schedule and activities to ensure the contract/change order schedule is met. Review updated contractor's progress schedule and recommend approval, rejection, and corrective actions to GWA.
  - Verify contractor's material supply list with regard to delivery timetable, progress schedule, and justification for payment.
  - Analyze and participate in negotiating claims and contract change requests; recommend action deemed appropriate.
  - Prepare for GWA approval, change orders to modify the terms of the contract (change in cost, performance time, or technical provisions). With GWA's approval, review changes to the design made by the DB firm, as necessary.
  - Provide daily construction reports using the management software (ProCore), if added by GWA, which include pictures of construction highlighting on-going, finished, and deficient work, safety violations, examples of acceptable work, and other critical items. Pictures shall be clearly labeled and be taken before (to show existing conditions), during, and after construction.
  - Provide monthly construction reports to highlight accomplishments, milestones achieved, summarize construction activities and significant events, meetings, and review and comment on construction schedule status. Periodically provide updated construction schedule.
  - Maintain a set of As-Built drawings recording all installed facilities, deviations from the original plans, details of installation, encountered subsurface features and utilities, and critical dimensions. This set of As-Built drawings is to be separate from the Contractor's as-built drawing set to ensure the CM has their own set to check against the Contractor's set.
  - Conduct weekly (or otherwise specified interval) project meetings with the contractor and GWA to discuss work progress and any concerns relating to the construction.
  - Witness field tests performed by the construction contractor or his representative for compliance with the contract drawings and specifications.
  - Inspect construction, installation, and assemblage of work agreed to with GWA. Verify conformance to the contract provisions and check for acceptable workmanship. Report acceptable and unacceptable work to GWA, and, if added by GWA, file through the management software (ProCore).
  - Monitor and track the contractor's compliance with permits.
  - Monitor and track permit and insurance expiration dates.
  - Review contractor claims and provide recommendations to GWA.
- c. Post Construction – the following elements of construction activity are required during the post- construction stage of construction management.

- Lead the pre-final inspection and prepare a list of incomplete work to be completed before substantial completion.
- Determine the date of beneficial occupancy, and, substantial completion according to the contract terms.
- Lead the final inspection and prepare a punch list of deficiencies to be completed before final acceptance and final payment.
- Perform or observe all operational testing for proper operation, functionality, and performance. Accumulate all performance test data and submit to GWA.
- Verify all debris removal and clean-up is done.
- Verify final quantities installed and note differences from the estimated contract amount.
- Accumulate and provide to GWA all records, documents, submittals, log books, files, test results, etc.
- Review contract required warranties, O&M manuals, etc. and verify full compliance by the contractor.
- Provide a final review of construction contractor's as-built drawings and transmit the as-built drawings to GWA.
- Provide CM's as-built drawings and transmit to GWA.
- Prepare a final construction report summarizing construction activities and issues.

**Engineer Team Responsibilities:** Manage the project and contract associated with the Tumon and Tamuning Hot Spots construction project in accordance with the Grant Conditions (Appendix B).

**GWA Responsibilities:** Provide completed design (drawings, specifications, bid schedule, and related provisions completed by the Tumon and Tamuning Hot Spots designer) for the Tumon and Tamuning Hot Spots construction project that are to be part of the DB IDIQ Task Order concurrent with and managed by this Task Order #1. Provide information, when available, as requested by the Engineer and participate in meetings and reviews of project progress. Provide CCTV data used to develop the Tumon and Tamuning Hotspots design documents.

**Products:** Project documentation