

**PERFORMANCE MANAGEMENT CONTRACT
FOR THE GUAM WATERWORKS AUTHORITY
WASTEWATER TREATMENT PLANTS, WASTEWATER
COLLECTION SYSTEM, AND WASTEWATER LIFT
STATIONS**

BY AND BETWEEN

THE GUAM WATERWORKS AUTHORITY

AND

VEOLIA WATER COMPANY

THIS 5TH DAY OF DECEMBER, 2006



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PERFORMANCE MANAGEMENT CONTRACT

This Performance Management Contract ("Contract"), consisting of 54 numbered pages is made and entered into on the 5th day of DECEMBER, 2006 by and between:

Veolia Water Company, hereafter referred to as "Contractor," "PMC," or "Seller" or any variant thereof), duly organized and existing under the laws of Guam and licensed, registered and qualified to do business in Guam with its principal address at 777 Rte. 4, Ste. 10B, Sinajana, Guam 96910; and possessing Guam Business License Number 0721690.

-and-

The Guam Waterworks Authority, ("GWA"), a Guam Public Corporation, duly created and existing under the laws of Guam, with its main business office located at 578 North Marine Corps Drive, Tamuning, Guam 96913;

RECITALS

WHEREAS, GWA desires to improve the operation and maintenance of its Wastewater Treatment Plants, Collection System and Lift Stations; and

WHEREAS, GWA seeks to improve the operational efficiency and reliability of the Wastewater Treatment Plants, Collection System and Lift Stations in order to reduce the long-term costs incurred by the customers of GWA; and

WHEREAS, the Consolidated Commission on Utilities has determined that the hiring of Contractor is a preferred option for GWA to improve outage planning, maintenance and overall performance of its Wastewater System; and

WHEREAS, GWA seeks to engage the professional services and assistance of Contractor to provide professional construction, engineering operations, maintenance, repair,

management services, outage planning and scheduling, budgeting, procurement, training and such other services as are specified herein; and

WHEREAS, GWA has provided adequate public announcement of the need for such services through an Invitation for Bid ("IFB") describing the type of services required and specifying the type of information and data required of each offeror; and

WHEREAS, GWA issued IFB # 2006 -15 for the management, operation and maintenance of the Wastewater System; and

WHEREAS, Contractor submitted a Bid for the management, operation and maintenance of the Wastewater System; and

WHEREAS, GWA, upon evaluation of the submitted bid proposals, determined that Contractor is the most responsive bidder to provide the services set forth in the IFB; and

WHEREAS, Contractor is fully willing to provide, and is capable of providing, the management, operations, maintenance and repair services set forth in the IFB and Contract in accordance with the terms and conditions thereof; and

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledged; Contractor and GWA hereby agree as follows:

SECTION 1 – DEFINITION OF TERMS

In this Contract and in the recitals hereto the following are defined as:

1. **“Approved”** the word “Approved,” when applied by Engineer to Contractor’s drawings or documents, shall mean that the drawings or documents are satisfactory from the standpoint of interfacing with GWA furnished components, and/or that Engineer has not observed any statement or feature that appears to deviate from the Specification requirements.
2. **“Approved As Revised”** the words “Approved As Revised,” when applied by Engineer to Contractor’s drawings or documents shall mean that the drawings or documents are approved as defined above, except that the corrections shown are required for the proper interfacing with GWA furnished components or are necessary to be in conformance with the Specification’s requirements.
3. **“Bid”** means the proposal submitted by the Contractor in response to Invitation For Bid number GWA-IFB No. 2006-15 and any subsequent Bid Amendments or clarifications issued by GWA
4. **“Bid Documents”** means the Invitation For Bid number GWA-IFB No. 2006-15 and any subsequent Bid Amendments or clarifications issued by GWA.
5. **“Capital Improvement Project”** shall mean those projects which GWA and the PMC agree that the PMC will undertake to improve plant performance and material condition and which shall be funded from GWA’s Capital Budget.
6. **“Change in Law”** means the enactment, passing, commencement, revocation, overturning, modification, amendment, non-renewal or abrogation of any decree, statute, law, regulation, license, permit, authorization, concession, approval or other administrative act of any regulatory entity which comes into force after the signing date of this Agreement or any change in the interpretation or application of any of the foregoing by any regulatory entity after the execution date of this Agreement.
7. **“Change Order”** is a written instrument to Contractor signed by GWA authorizing an addition, deletion, or revision in the goods or special services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract.

8. **"Claim"** means any dispute or disagreement in accordance with the Guam Procurement Law, 5 GCA §5001 et. seq. and the Government Claims Act of Guam, 5 GCA §6001 et. seq. and the procedures set forth therein.
9. **"Commencement Date"** means the date upon which Contractor assumes operational control of the Wastewater System.
10. **"Completion Date"** shall have the meaning given in the Contract, or the last day of any extension of this contract.
11. **"Contractor"** refers to the Performance Management Contractor with whom GWA has entered into this Contract.
12. **"Contract" or "Agreement" or "Performance Management Contract"** is this written Contract between GWA and Contractor covering the furnishing of Goods, Special Services, and other services in connection therewith evidencing what is contemplated and agreed to between the parties including any other Amendments hereto or other Contract Documents either attached to the Contract or made a part thereof by reference therein.
13. **"Contract Documents"** means all the documents specifically listed in Section 4 below, together with all modifications or changes issued after execution of the Contract.
14. **"Day"** is a calendar day of twenty-four (24) hours measured from midnight to the next midnight. All days and times shall be expressed as Chamorro Standard Time.
15. **"Defective"** is an adjective which when modifying the words Goods or Special Services refers to Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.
16. **"Delivery Time"** means the total number of days or the dates stated in this Contract for furnishing the Goods and/or Special Services.
17. **"Deliverable Work Product"** shall mean such reports, products, or services that Contractor is required to provide to the GWA in accordance with this Contract, and such other work product as may be specified in the IFB.
18. **"Drawings"** means all official drawings approved by an Engineer and showing the character and scope of the Goods to be furnished or other documents so identified.
19. **"Effective Date of the Contract"** is the date the authorized representative affixes their signature to this Contract after having all other necessary signatures first appearing or some

other time specifically stated herein that follows the affixation of said signatures.

20. **"Engineer"** wherever the words **"Engineer"** or **"Engineers"** appear in the Contract Documents, it shall mean either GWA's Chief Engineer or an Engineer in the employ of GWA. GWA may assign several Engineers as required to cover specialized areas of expertise if necessary.
21. **"Engineer's Instructions"** are those written instructions issued by a GWA Engineer which clarify or interpret the Contract Documents or order minor changes or alterations in the Goods or Special Services to be furnished but which do not involve a change in the Purchase Price or the Delivery Time.
22. **"Final Payment"** means the last payment made by GWA to Contractor after delivery and acceptance of all Services as herein specified and performed under this Contract. For purposes of found Error only, said term shall refer to date upon which GWA made the final or last payment due to Contractor for a specific good, performance item, work task or service, and not the last payment made by GWA to Contractor arising from the contract.
23. **"Force Majeure"** shall mean those events or acts specified in Section 18 of this Contract.
24. **"FTE"** means a "Full Time Equivalent Employee" or the availability of one full time employee for no less than two thousand and eighty work hours in one calendar year.
23. **"Goods"** means all property required to be furnished by Contractor under the procurement documents.
24. **"Guam Waterworks Authority or GWA"** means the public corporation of the Government of Guam or its successors, which has statutory authority to operate and maintain the water and wastewater system on Guam.
25. **"GWA General Manager"** is the General Manager of the Guam Waterworks Authority or the General Manager's authorized designee.
26. **"Insurance"** shall have that meaning specified in Section 16 of this Contract.
27. **"Modification"** is a written amendment of the Contract signed by both parties, or Change Order, or the Engineer's Instructions.
28. **"Month"** means the period beginning the first day of the calendar month.
29. **"O&M Spending"** means spending for certain categories of operations and maintenance expenditures for the Wastewater System directly impacting GWA's total O&M costs. Such expenditures need to be optimally controlled by the contractor in order to maximize the total

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benefit to GWA and its customers.

30. **“Owner”** means the Guam Waterworks Authority.
31. **“Performance Bond”** shall mean that Performance Bond or guarantee of a financial institution or similar security acceptable to the Guam Waterworks Authority as specified in Volume I of the IFB. Providing the Performance Bond by Contractor is a condition precedent to the formation and execution of this Contract, and failure by the Contractor to furnish a Performance Bond in the time, amount and at the time specified, in the amount specified and in the manner required by the IFB, or to maintain such Performance Bond in full effect during the term of this Contract, shall be grounds for cancellation of the Contract.
32. **“Performance Improvement Project (PIP)”** means those projects, which Contractor is responsible to accomplish as specified in the IFB and agreed between GWA and the Contractor.
33. **“Performance Management Contract”** means this Contract for the management, operation, and maintenance of the Wastewater System Plants as amended or modified from time to time.
34. **“Performance Management Contractor” or “PMC”** means the Contractor selected by GWA to perform the services required under this Contract.
35. **“Planned Outage”** shall mean an outage scheduled by Contractor and agreed upon by GWA
36. **“Point of Delivery”** is the place at which property in the goods shall pass to GWA shall be CIF landed at job-site and unloaded on Guam, assembled and ready for use..
37. **“Project”** is meant to include the wastewater facilities and system, or works the Goods and Services are to be used for or incorporated into.
38. **“Project Scope”** means the scope of the supply of work of the contractor in connection with the Project.
39. **“Purchaser”** is the Guam Waterworks Authority with whom Contractor has entered into the Contract.
40. **“Qualified GWA Employee”** shall mean an employee who on and after the Commencement Date: (1) GWA certifies is in compliance with GWA’s Drug Free Workplace Policy; (2) by reason of education, training and/or experience, possesses the requisite qualifications for and capability to perform, as established by the Civil Service Commission or their successor, the duties and responsibilities of the position to which the employee is to be assigned; (3) has

- had satisfactory performance reviews within GWA; (4) if assigned by GWA to the Wastewater System, performs, in a manner satisfactory to Contractor.
41. **"Scope of Services"** shall mean those services set forth in Section 2, - Purpose and Scope of Services of this Contract and as indicated in IFB hereto, a copy of which is attached hereto and incorporated herein by reference.
42. **"Seller"** is the Contractor.
43. **"Site"** means the area where the Project is to be executed. In this case, the Site is the Wastewater System as delineated in the Bid Documents and appendices thereto and may be referred to as the "wastewater system."
44. **"Special Services"** are those services to be furnished by the Contractor at the Wastewater System as required by the Contract.
45. **"Termination Date"** shall have the meaning given in the Contract.
46. **"Territory"** means the Territory of Guam.
47. **"Wastewater System"** shall mean that GWA system consisting of Wastewater Treatment Plants, Collection System, and Lift Stations. Comprehensive information concerning the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment are set forth in Volume III Wastewater Treatment Plants, Collection System, and Lift Stations Plant Technical Description of GWA-IFB- 2006 -15. The Wastewater Treatment Plants, Collection System, and Lift Stations Plant Technical Description are fully incorporated herein by reference.

SECTION 2 – PURPOSE AND SCOPE OF SERVICES

2.1 Purpose. GWA hereby agrees to retain Contractor to manage, operate and maintain Wastewater Treatment Plants, Collection System and Lift Stations and Contractor agrees to perform as specified in the Bid Documents and this Contract and any amendment thereto. By awarding the contract, the goal of GWA is to improve the efficiency, reliability, operations, maintenance, and training for the Wastewater System.

2.2 The Scope of Services to be rendered. Contractor shall be responsible for the following:

- 1) Management, Operation, and Maintenance of the Wastewater System by

- qualified engineers and other personnel who are knowledgeable and skilled relative to providing the services required under this Contract;
- 2) Accomplishment of the Plant Performance Improvement Projects as described in the Bid and as may be otherwise agreed upon between GWA and the PMC;
 - 3) Supervision and training of Plant Staff as set forth in the Bid and as otherwise may be agreed upon between the parties;
 - 4) Meeting Specified Performance Standards set forth in the Bid and in GWA wastewater permits or as otherwise may be set forth under applicable laws or regulations;
 - 5) Inventory control and management as described in the Bid;
 - 6) Supervising, conducting, and overseeing construction of wastewater projects; and
 - 7) Other projects, responsibilities and duties as set forth in the Bid Documents not specified herein.

2.3 Key Performance Indicators. Contractor shall utilize best operation and maintenance practices, training and management techniques to accomplish key performance indicators for the Wastewater System including:

1. Environmental Compliance:
 - The PMC will operate and maintain the wastewater system within U.S. EPA / Guam EPA permits and regulations (including Clean Water Act), as well as GWA Environmental Section enforced Spill Control and Countermeasure (SPCC) inspections and must at a minimum meet the performance matrix provided in the Bid Documents.
 - Treatment plants must meet or comply with all National Pollution Discharge Elimination System (NPDES) permit limits.
 - Pump stations shall not have any overflow incidents.
 - Collection lines must be kept free of grease and other material to prevent sewage overflows.

2. Preventative Maintenance and Work Orders:

The PMC shall institute preventative maintenance program and perform no less than 85% of all required preventive maintenance. In addition to this the PMC shall also perform no less than 85% of all corrective maintenance.

3. O&M Expense:

During price Bid submittals, the PMC identifies annual O&M budgets that will be used as actual budget amounts for each specified contract/fiscal year. The PMC will be required to maintain O&M costs within proposed budget amounts, which after the first year shall be negotiated based upon performance during the preceding year. Actual annual expenses will be evaluated for incentive bonuses or penalties at the end of each contract/fiscal year. GWA and the PMC will share 50% of all savings from O&M expenses that fall below the proposed budget and Contractor is responsible for all costs that exceed the O&M budget.

O&M expenses do not include non-routine major repairs or replacements of equipment or systems (referred to Performance Improvement Projects ("PIPs")). GWA and the PMC will be meeting separately on these items to evaluate and agree on budgetary amounts for all PIPs. Such meetings shall be held at times, dates and places agreed upon between the parties, however, the meetings will occur not less than quarterly unless waived by GWA.

4. Plant / Station Availability:

The PMC shall maintain 100% availability of all wastewater treatment plants and pump stations throughout the term of the contract. GWA may temporarily grant a limited term waiver of this requirement based upon a force majeure or other event not foreseen between the parties at the time of this contract. No waiver will be effective unless it is set forth in writing and signed by both the Chief Engineer for GWA and the GWA General Manager.

5. Redundant Equipment Availability:

The PMC shall maintain all redundant equipment and rotate their use on regular basis. Aside from tests and inspections specified in Section 4.19 of Volume I of the Bid, GWA may at its



own expense perform any other inspection it deems necessary to ensure the proper maintenance and operation of the wastewater system. All redundant equipment will be required to maintain an availability of 100% aside from approved overhaul downtime.

6. Labor Overtime:

Overtime expenses shall not exceed 10% of regular labor for Wastewater Division employees for each contract/fiscal year based on the minimum staffing levels to be negotiated prior to entering into this contract (not more than 59 for the first year) and on a yearly basis thereafter. The PMC shall be penalized for all overtime expenses exceeding 10% of the regular base salary for all wastewater employee staffing levels negotiated for each fiscal year the overtime expense occur. All overtime expenses must be justified in writing by the Contractor. In addition, the Contractor must provide reasonable efforts to ensure that overtime either doesn't occur in the first place or is minimized if it does occur. In the event GWA fails to provide adequate staffing, the terms of this Contract and the Bid will control with respect to providing replacement or minimum staff levels. However, GWA may elect to incur overtime expenses in the event that proposed staffing replacement costs are too high. In such cases GWA and the Contractor will negotiate on the dates and manner for staff replacement.

SECTION 3 – CONDITIONS PRECEDENT

3.1 Contractor's Submittals. Contractor shall supply the following to GWA, each in form and substance satisfactory to GWA unless such condition precedent is waived by GWA:

- i) copies of resolutions adopted by Contractor's Board of Directors authorizing the execution, delivery and performance by Contractor of this Contract certified by the company secretary of Contractor in a manner satisfactory to GWA;
- ii) a performance bond as specified in Section 26 – Performance Bond, of the Contract.
- iii) a copy of the Articles of the Incorporation of Contractor, certified by the company secretary in a manner satisfactory to GWA;
- iv) a copy of Contractor's license to do business in Guam.

- v) a legal opinion of Contractor's legal counsel in form and substance set forth herein.

3.2 GWA's Submittals. GWA shall supply a copy of any and all resolutions adopted by the Consolidated Commission on Utilities authorizing the execution, delivery and performance by GWA of this Contract certified by the corporate secretary of GWA in a manner satisfactory to Contractor.

3.3 Insurance. Contractor shall obtain all insurance specified in Section 16 – Insurance, of this Contract.

SECTION 4 – CONTRACT DOCUMENTS

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

- a) GWA-IFB No. 2006 – 15.
- b) All Amendments to GWA-IFB 2006-15.
- c) This Performance Management Contract, all Amendments thereto, any change orders or Engineer's Instruction executed thereunder.
- d) The Performance Bond.
- e) Affidavit of Disclosure of Major Shareholders.
- f) Annual audited financial information on Contractor's firm and all subcontractors that will be used in the Performance Management of the Wastewater System.
- g) Certificate of Good Standing to conduct business in jurisdiction of residence.
- h) Non-collusion Affidavit.
- i) Guam business license.

j) Proof of all types of insurance required under Section 16 of this Contract.

4.2 Discrepancies. In the case of discrepancies or conflicts between the above-referenced Contract documents, the following order of precedence shall apply:

1. this Performance Management Contract as amended;
2. the Bid Documents, including amendments and clarifications thereto;
3. the Contractor's proposal submitted in response to the IFB; and finally
4. Change Orders or Engineer's Instructions,

Should Contractor believe that there is any discrepancy or conflicts between the above mentioned documents, it shall provide in writing a detailed explanation of the discrepancy to the GWA General Manager before proceeding with the work affected thereby. The GWA General Manager, after consultation with the GWA legal counsel, shall provide a written response to any such request for clarification.

4.3 Presumption of Familiarity. It will be conclusively presumed that Contractor has read, examined and agreed to each and every term, condition, provision, covenant or Contract contained within each and every Bid Document and this Contract. Contractor is assumed and required to be familiar with all federal (U.S.) and local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of any law, rule or regulation on the part of Contractor will not relieve Contractor from responsibility or liability.

SECTION 5 – CONTRACT TERM

5.1 Term. The term of this Performance Management Contract shall be for a three-year period commencing on the date the GWA General Manager or his/her designee affixes their signature to this Contract, and terminating exactly three years therefrom unless this contract is to expire on a weekend at which case it shall expire the preceding Friday Chamorro Standard Time. The contractual obligation between GWA and Contractor is always subject to the availability of funds by GWA.

5.2 Extension. Prior to the expiration of the three-year contract term, GWA may, its election, extend the Contract for a new three-year term. Prior to the expiration of the three-year extension, GWA and Contractor may renew this Contract upon the mutual agreement of the parties. If the Contract is to be renewed, then the parties shall meet and discuss the new terms and conditions of the Contract six (6) months before Termination Date of this Contract.

5.3 Notice of Extension. GWA shall notify Contractor in writing its intent to extend the Contract not later than ninety (90) days before the expiration date of this Contract.

SECTION 6 – OPERATION OF THE WASTEWATER SYSTEM

6.1 Full Responsibility for Management Operations and Maintenance. During the term of this Contract and any extension thereof, Contractor shall be responsible for the management, operation, maintenance and repair of the Wastewater System, including all regularly schedule preventative or remedial maintenance and any maintenance required due to plant forced outage. Contractor shall perform its duties, to the extent permitted by Guam law, to keep the wastewater system in good working order, continually improve the Wastewater System and prevent deterioration as required under the Bid and this Contract.

6.2 Outage and Maintenance Planning and Scheduling. Contractor shall provide outage and maintenance planning and scheduling services in accordance with Contract requirements.

6.3 Management Responsibility for Wastewater System Personnel. Contractor shall provide, to the extent permitted by Guam Law, management and supervision of the staff at the Wastewater System in the day-to-day performance of its duties in accordance with Contract requirements.

6.4 Management of the O&M budget for the Wastewater System. GWA and the PMC shall mutually negotiate the O&M Budget after the first year this Contract is in place and approve the operations and maintenance budget for the Wastewater System as agreed to between the parties. However, the budget for the first year shall be the amount of the Contractor's Bid

and shall be included and made a part of this Contract. Contractor shall furnish all agreed upon and required equipment, materials and supplies, and services, keeping within each year's O&M budget as required by the Bid Documents and this Contract. GWA shall reimburse Contractor for such expenditures as GWA has given prior written approval. In addition, GWA reserves the right to audit Contractor, using its own staff or outside resources at its own expense, to ensure that Contractor has implemented adequate cost controls.

6.5 Procurement Authority. In pursuance of its obligations to furnish equipment, materials, supplies and services; agreed by GWA, in maintaining and repairing the plant, Contractor shall have the authority to:

- i) Enter into contracts for the supply of goods and services, including contracts with GWA. However, no contract aside from those entered into with GWA shall extend for a period beyond that performance is being rendered by Contractor and all such contracts shall automatically terminate when this Contract between GWA and the PMC terminates (including any extension period);
- ii) Appoint and remove consultants and professional advisers. However, no appointment for any consultant or other professional advisor may extend beyond the performance by the PMC under this Contract;
- iii) Purchase replacement parts and equipment or perform any other tasks required under the Bid;

6.6 PMC Staffing/Hiring of Subcontractors.

6.6.1 Staffing Level. The Contractor shall provide all services hereunder as an independent Contractor. For the duration of the duration of the Performance Management Contract, Contractor shall have sufficient number of FTE (Full Time Equivalent employee) physically present and available to ensure that the required services are performed. The number of physically present FTE's on Guam at any particular time during the Contract period may be more or less depending on the operational status of the plant. GWA may, at its discretion,

request that an employee (initial or additional) proffered by Contractor be replaced in the event that the Authority believes that such employee lacks the requisite experience or expertise. Contractor will bring personnel to Guam with such expertise as is necessary to perform the services required hereunder.

6.6.2 Employee Positions. The Contractor will provide appropriate staffing levels of employees as specified in their Bid.

6.6.3 Hiring of Personnel Contractors and Subcontractors. The PMC may provide, upon the prior written consent of GWA, experienced personnel, contractors, and subcontractors, if required during the performance of the Services hereunder. GWA has the absolute right to refuse the services of any PMC employee offered by PMC under the terms set forth in the Bid. Said personnel, contractors or subcontractors shall be under PMC's sole and exclusive direction and control, PMC shall remain, at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state and municipal taxes chargeable or assessed with respect to PMC's personnel, contractors or subcontractors, including but not by any limitation, social security, unemployment, federal and state withholding, and other taxes. PMC shall also be responsible for and pay all compensation and/or any reimbursements due to personnel, contractors, subcontractors, and no additional amounts shall be due from the Authority. The Contractor shall be liable for all costs of their employees, including liability for negligence or intentional actions relating to the Contractor's subcontractors, employees and its agents acts or omissions.

The listings of any Contractor/PMC personnel, contractors or subcontractors shall be subject to the approval of GWA, commencing at the start of this contract, Contractor shall provide a list of personnel, contractors, and subcontractors assigned to perform work under this Contract for GWA's review and approval.

6.6.4 Provision of Listing of Personnel/Contractors/Subcontractors. Contractor shall provide GWA with a listing of the name, social security numbers, passport numbers or other identifying information which GWA may require of all personnel, contractors or subcontractors, utilized by it for this project within seven (7) days of the hiring or engagement of the PMC with

such personnel, contractor or subcontractor. These listings shall be subject to GWA approval under the terms stated above.

6.7 Training. For the duration of this Contract and any extension thereof, the Contractor will train GWA employees on-site and will develop certain hands-on programs for such training, in accordance with Bid and Contract requirements.

6.8 Plant Budgeting and Inventory Management. The Contractor shall develop, monitor and manage the annual wastewater budget. Such budget shall not be implemented without the written approval of GWA and final approval by the Consolidated Commission on Utilities. In planning the budget, the Contractor will develop a process of justifying activities, personnel, materials and supplies, etc. in support of plant mission critical objectives.

6.9 Plant Inventory Management. The Contractor shall be responsible for the management of wastewater inventory.

6.10 Specialized Technical and Engineering Support. The Contractor shall provide ongoing technical and engineering services to plan service interruptions and outages, prepare budgetary estimates for major outages, outline project critical tasks and assist in defining reasonable or realistic schedules for completion. In addition, Contractor will:

- a) Utilize (or develop if necessary), the GWA Computerized Maintenance and Management System (CMMS) or equivalent system, to track repairs, preventive maintenance history, materials and labor costs, etc.
- b) Ensure that all service interruptions are planned well in advance and are executed to meet projected budgets, time lines, and all technical specifications of the work.
- c) Provide effective methods to help manage all major overhauls in specific target areas.
- d) Provide engineering expertise to evaluate cost effective alternative solutions whenever the wastewater system components show greater wear and tear than expected during the outage planning study.

- e) Assist in developing detailed condition assessment inspections to provide valuable data in planning a major outage for a specific targeted wastewater treatment plants, collection system and lift stations.
- f) For GWA employees, the Contractor shall evaluate, monitor and provide recommendations on the wastewater operating procedures, employee skill gaps and any other resources (such as reference technical drawings, service manuals, or other tools) that are usually helpful in the efficient operation of a particular wastewater treatment plants, collection system and lift stations. Recommendations shall be incorporated in the section regarding Personnel Training and Development of GWA Employees.

6.11 Regulatory Reporting. Contractor shall undertake all necessary regulatory communications and reporting requirements required by applicable law or regulation with copies of all such communication and reports being provided to GWA either prior to or concurrently (as directed by GWA), or if applicable, having said reports and communications being provided to GWA who will then perform such reporting or communications as required by the Stipulated Order (as Amended).

6.12 Environmental Compliance. The Contractor shall operate the wastewater treatment plants, collections system and lift stations in compliance with all environmental (United States Environmental Protection Agency and Guam Environmental Protection Agency) and other applicable federal local laws and regulations related to Contractor's performance under the terms of this Contract, and shall comply with any changes in such laws, regulations and permits and with any new laws and regulations.

6.13 Designated Representative. Contractor agrees to designate two persons as their primary contacts for GWA with regard to the services provided hereunder and provide updates in the event any such person is being replaced or having their duties altered. Contractor shall ensure that at least one person so designated is always available to GWA and its management at all times for the term of this contract. Contractor warrants that at least one authorized representative shall be

on Guam and available to GWA at all times (including during emergencies) throughout the term of this Contract.

6.14. Compliance with Law. Contractor shall comply, and require compliance by its subcontractors agents and employees with all applicable laws or regulations in connection with the Goods and services furnished hereunder and warrants to GWA that any contract it has with any third party shall contain a provision requiring compliance with all applicable laws related to their performance. This includes the securing of any business or other licensing, certifications, or permits required.

If Contractor discovers any variance between the provisions of applicable laws and regulations and the drawings, Specifications, and other technical data furnished by the GWA, Contractor shall promptly notify GWA in writing thereof and obtain approval of necessary changes from GWA before proceeding with the work affected thereby.

6.15. Full Efforts. Contractor agrees to exercise reasonable business efforts to perform the required duties and responsibilities under this Contract in accordance with the laws, rules and regulations of the Government of Guam.

6.16. Accuracy of Work. Contractor shall be responsible for the professional and technical accuracy of all work, goods, items and materials furnished under this contract. Contractor shall, without cost to GWA, correct and revise any material errors or deficiencies in its work.

6.17. Business License. Contractor agrees to obtain and keep current a Guam business license, or other licenses required by law, and to provide proof of such license to GWA at the beginning this Contract and when requested by GWA throughout the term of this Contract.

6.18. Performance. GWA's review, approval, acceptance of and payment of fees for services required under this Contract shall not be construed to operate as a waiver of any rights under this Contract of any cause of action arising out of Contractor's failure to perform in

accordance with this contract.

SECTION 7 – PERSONNEL MANAGEMENT – UTILIZATION OF GWA EMPLOYEES

7.1 GWA Assignment of Existing Employees. GWA shall, unless otherwise provided for in this Section, on the Commencement Date, assign to the Wastewater System and shall keep assigned to the Wastewater System all Qualified GWA Employees assigned to and actually working at the Wastewater System as of the date first written above. GWA shall make the assignments in such a manner and at such a time so as to ensure that the GWA employees so assigned are present for duty at the Wastewater System on the Commencement Date at the times at which they are normally present.

7.2 Contractor Utilization of Existing GWA Employees. Contractor shall, unless otherwise provided for in this Section, beginning on the Commencement Date and continuing through the Termination Date, utilize all GWA employees assigned to the Wastewater System.

7.3 General Assignment. All GWA employees assigned by GWA to the Wastewater System, at any time under any provision of this Contract shall be, at the time of their assignment, and shall, at all times during their assignment, continue to be Qualified GWA Employees and shall be assigned to the Wastewater System. Before assigning an employee to the Wastewater System, GWA shall ensure employee is a Qualified GWA Employee.

7.4 Personnel Administration. GWA shall, subject to Sections 7.5 through 7.10, perform all personnel administration functions for GWA employees assigned to the Wastewater System. GWA shall have access to its employees assigned to the Wastewater System for the purpose of performing its administrative functions. Personnel administration functions shall include, but not be limited to:

- (a) Computation and payment of compensation; GWA shall retain its standard responsibilities for all GWA employee payroll expenses and disbursements;
- (b) Administration of sick leave, maternity leave, paternity leave, annual leave, military leaves of absence and such other programs providing GWA employees authorized absences;

- (c) Recruitment, examination and appointment of new hires;
- (d) Administration of employee benefit plans, health insurance, retirement plans, worker compensation plans, and such other programs for the welfare of GWA employees;
- (e) In-service training programs and such other training programs for which GWA employees are eligible;
- (f) Disciplining employees, and,
- (g) Such other personnel matters not related to the maintenance, operation, and repair of the Wastewater System.

7.5 GWA Policies and Procedures. GWA shall take such actions and shall establish, to the extent not already in existence, and implement departmental policies, procedures, or rules pursuant to appropriate authority, applicable to Contractor and to GWA employees assigned to the Wastewater System that facilitate Contractor's ability to efficiently and effectively repair, operate, and maintain the Wastewater System and which, at a minimum, provide for:

(a) In the event that GWA disciplines any GWA employee assigned to the Wastewater System and imposes the adverse action of suspension or termination ("Disciplined Employee"), GWA shall provide a substitute employee who shall be a GWA Employee ("Substitute Employee") for the position then occupied by the Disciplined Employee. The Substitute Employee shall work at the Wastewater System for the period beginning on the day before the suspension of the Disciplined Employee and continuing through the day after the suspension ends or until a replacement is obtained under the terms of this Contract. This requirement for GWA to provide a Substitute Employee also applies to a suspension of an employee during the notice period of the disciplinary procedures and when an employee is placed on administrative leave pending adverse action.

(b) Contractor approval of GWA employee absences for sick leave, maternity leave, paternity leave, family medical leave, annual leave, military leaves of absence and such other programs providing for GWA employee authorized absences. Contractor shall grant approval of leave in accordance with applicable GWA Personnel Rules and Regulations and shall not unreasonably deny employee requests for authorized absence. Contractor disapproval of GWA employee requests for authorized absence shall be provided to GWA in writing and

must be based solely upon scheduling needs to ensure the safe and efficient repair, operation, and maintenance of the Wastewater System;

(c) Contractor authority to schedule extended hours, staggered hours, flexible hours and Sunday working hours as Contractor may determine necessary to ensure the safe and efficient refurbishing, operation, and maintenance of the Wastewater System;

(d) Contractor authority to make awards in a manner provided by Guam law to GWA employees using Contractor funds. Contractor shall have sole discretion making such awards as an incentive for superior work performance or other significant contribution by an individual GWA employee to the safe and efficient repair, operation, and maintenance of the Wastewater System based upon employee superior performance as evaluated by Contractor.

(e) Contractor authority and discretion to counsel or issue written warnings to individual employees for unsatisfactory work performance and violations of work rules, conduct rules, safety procedures, or other conduct Contractor determines to be detrimental to the safe and efficient repair, operation, and maintenance of the Wastewater System. In its sole discretion, GWA may take disciplinary action, as it deems appropriate. Contractor shall cooperate and assist GWA by providing such witnesses and evidence as GWA may reasonably request to support any disciplinary action. Contractor may request disciplinary action but shall not have authority to initiate or direct disciplinary action against any individual GWA employee; provided, however, that GWA shall use its best efforts to proceed promptly, diligently, and thoroughly to process all requests and take such disciplinary action as requested by Contractor if reasonable under the circumstances, including, but not limited to the immediate suspension of GWA employees during the notice period of GWA's disciplinary procedures, or placing employee on administrative leave pending adverse action, if their continued presence would interfere with the safe and efficient operation of the Wastewater System or the safety and health of persons or if the suspension was necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents;

(f) GWA and Contractor, upon request, must provide all information relating to employee activities necessary to the management and GWA employees assigned to the Wastewater System.

(g) Contractor has the authority and responsibility to prepare the official performance appraisals for all GWA employees assigned to the Wastewater System in

accordance with the established GWA Personnel Rules and Regulations and performance evaluation procedures; and,

(h) appropriate implementation of Section 6.2 through 6.12.

7.6 Contractor Wastewater System's Management. Contractor shall have the authority to establish work rules, assign and direct the work of the GWA work force, make work schedules, establish safety procedures, prescribe training and approve attendance at training, and any other necessary management actions in performing the requirements of this Contract; provided however, that Contractor shall act in consultation and coordination with GWA on such matters. Contractor shall have the sole discretion in selecting methods and means to accomplish the refurbishing, operation, and maintenance of the Wastewater System.

7.7 Assignment to Position. The assignment of GWA employees to the Wastewater System shall be to a specific position within the Wastewater System.

7.8 No Reassignment Without Contractor's Consent. GWA shall not cause the assignment of any GWA Employee assigned to the Wastewater System to cease without the consent of Contractor; such consent shall not be unreasonably withheld.

7.9 Contractor may, at any time, with the prior written approval from GWA, have Contractor employees or consultants perform functions, duties, and responsibilities at the Wastewater System if Contractor determines that such work performed by said employees is in accordance with the scope of the PMC.

7.10 Contractor shall cooperate with GWA in GWA's personnel administration under Section 6.10 to the extent that Contractor has a role in the supervisory process.

7.11 Contractor Vacancies – Consideration of GWA Employees. When Contractor hires to fill positions at the Wastewater System, Contractor shall give due consideration, to all Qualified GWA Employees who apply.

SECTION 8 – MEDIA RELATIONS AND CUSTOMER SERVICE

8.1 Media Relations – Contractor agrees that GWA and its approved staff shall always be the only authorized interface for all media release relative to all performance under this Contract. The Contractor agrees to participate in media events should GWA choose to involve the Contractor in any such release on terms and conditions set forth by GWA. GWA and the Contractor shall negotiate and agree in advance the content of such media events.

8.2 Customer Relations – To the extent Contractor, its employees, or its agents and GWA employees managed by Contractor are interfacing with the public, Contractor shall at all times ensure that all the employees are professional and respond to customer complaints in a professional manner. Training shall be provided if necessary to comply with this paragraph.

8.3 Customer Service – Contractor agrees to work collaboratively with GWA dispatch, GWA management and GWA Customer Service representatives to quickly address and solve any backlog or problem associated with the GWA wastewater system. At any time the Contractor or GWA employees under the supervision of Contractor are apprised of any customer service problem, the Contractor shall log the problem in a form and manner approved by GWA and provide the information to GWA for scheduling within 36 hours or earlier from receipt of information related to the problem for non-emergency work or with 2 hours for emergency related work and Contractor shall schedule the work and promptly notify GWA of all such work that is performed in a manner provided herein.

SECTION 9 – DUTIES AND RESPONSIBILITIES OF GWA

9.1 Cooperation. GWA agrees to make its management and staff reasonably available to Contractor so that Contractor can provide the services required hereunder.

9.2 Availability of Records. GWA shall take all steps to ensure that documentation required by Contractor for performance of its duties is available to Contractor. GWA agrees to promptly assist Contractor in obtaining such information as is needed by Contractor to perform the services hereunder. GWA is under no obligation to provide records not in its possession, but

agrees to assist in providing records in the possession of other entities or individuals.

9.3 GWA/Contractor Steering Committee. GWA and the Contractor shall organize a Steering Committee, which shall, from time to time, meet and discuss and agree on safety and technical guidelines for the operation of the Wastewater System and for the maintenance, repair and safety/security of the wastewater system. The Contractor shall operate the Wastewater System within such guidelines.

SECTION 10 – COMPENSATION FOR SERVICES

10.1 Payment. GWA shall pay Contractor for costs and services rendered hereunder in accordance with this Contract. Said payment shall be made within 30 days following GWA's receipt of an invoice. Should part of the invoice be challenged, GWA will at a minimum pay the unchallenged portions of the invoice under the same terms as above. Should GWA fail to make any payment due to Contractor under this Contract, GWA shall pay 6% interest (calculated on all principal and interest then due on an annual percentage rate basis) to Contractor in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

10.2 Contract Price. The Contract Price constitutes the total consideration to be paid by GWA to Contractor for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Contract. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price as set forth in the Bid Documents. Charges, fees, Contractor's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

Only a formal written Change Order request or amendment, accepted by GWA, may change the Contract Price. Contractor shall make any claim for an increase in the Contract Price in advance of performance of any such changes. However, GWA reserves the right to challenge

or refute such claims.

10.3 Payment Milestones and Schedule. Payment milestones have been selected to clearly identify the actual status of the portion of the work completed rather than anticipated project progress schedules. Payments will be based on actual completion of each milestone event, where applicable, and not on the scheduled completion date. When a change in the Contract is approved, the total Contract price will be altered to the new total, and the remaining milestone payments will be adjusted.

Milestones shall not be scheduled more frequently than once every month. GWA will not approve a milestone payment until all preceding milestones have been approved. GWA will make payments within thirty days following receipt and approval of the invoice for the completed milestone. GWA's approval for invoices shall not be unreasonably withheld and GWA shall work diligently to ensure that all invoices are approved in an expedited manner.

The payment milestones for monies due to the Contractor from GWA are as follows:

- (a) Fixed Monthly Management Fees;
- (b) Reimbursement Payments for budgeted and approved Operations and Maintenance expenditures as agreed to and scheduled between GWA and the Contractor;
- (c) Reimbursement Payments for Performance Improvement Projects related expenditures as agreed to and scheduled between GWA and the Contractor;
- (d) Incentive Compensation Payments

The payment of funds to GWA from the Contractor are as follows:

- (a) Penalty Compensation Payments due to Contractor's failure to meet its minimum performance guarantees.
- (b) As otherwise provided by this Contract.

10.4 The Bid amount and cost of the "Fixed Management Fees" under this Contract shall remain as set forth in the Bid aside from the 4% reduction of the Gross Receipts tax that was included in the Bid amount but not required under Guam law. As stated, the total amount of the fixed management fees includes all travel costs, living allowances, expenses, and all other

matters related to the price of this contract. The total Contract price is intended to be all inclusive of costs and expenses related to performance hereunder.

The O&M Budget shall for the first year constitute the amount submitted with Contractor's Bid and thereafter will be negotiated on an annual basis.

PIP and CIP amounts due to Contractor shall be negotiated in a manner as set forth in this Contract and the Bid. However, in no event will the total compensation to Contractor exceed the limits stated in the Bid unless specifically waived by GWA in writing and based solely upon unforeseen circumstances that arise following negotiations and agreement between the parties on a project by project basis.

10.5 Contractor shall submit for review by GWA detailed monthly invoices accompanied by a progress report describing the work performed during the compensation period. The reports shall be in a form and manner set forth in the Bid Documents and shall be accompanied by all information and data required under the Bid Documents. All payments to Contractor shall be free of any deductions, including but not limited to withholding taxes.

10.6 The amounts paid or reimbursed to Contractor shall in no event exceed the dollar amount indicated above except upon prior written Contract by the parties. Prior to incurring any expense not contemplated in the total fee, Contractor shall request prior approval of any such additional expense from GWA. No such expense shall be reimbursable unless approved in advance by GWA.

10.7 Final payment shall be made upon delivery and acceptance of all Services as herein specified and performed under this Contract. Prior to final payment, and as a condition precedent thereto, Contractor shall execute and deliver to the Authority a release of any claims arising under and by virtue of this Contract against the Authority except any identified written claims in existence at the time of the final payment.

SECTION 11 – TERMINATION

11.1 Stop Work Orders.

11.1.1 Order to Stop Work. The GWA General Manager may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety-days (90-days) after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the GWA General Manager shall either:

- (a) Cancel the stop work order; or
- (b) Terminate the work covered by such order, as provided in the 'Termination for Default Clause' or the 'Termination for Convenience Clause' of this contract.

11.1.2. Cancellation of Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or Contract price shall be modified in writing accordingly, if:

- (a) The stop work order results in an increase in the time required for, or in the Contractor 's cost properly allocable to, the performance of any part of this contract; and
- (b) The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the GWA General Manager decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final

payment under this contract.

11.1.3 Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment in a manner set forth hereunder.

11.2 Termination for Convenience.

11.2.1 Termination. The GWA General Manager may, when the interest of GWA so requires, terminate this Contract in whole or in part, for the Convenience of GWA. The GWA General Manager shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective. However, the GWA General Manager may not terminate this Contract without the approval of the Consolidated Commission on Utilities.

11.2.2 Contractor's Obligations. If this Contract is terminated in accordance with Section 11.2.1, the Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The GWA General Manager may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the GWA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

11.2.3 Rights to Supplies. The GWA General Manager may require the Contractor to transfer title and deliver to GWA in the manner and to the extent directed by the GWA General Manager:

(a) Training material;

(b) Any completed supplies; and,

(c) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and Contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the GWA General Manager, protect and preserve property in the possession of the Contractor in which GWA has an interest. If the GWA General Manager does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam (UCCG) found in Title 13, Division 2, Chapter 7, of the Guam Code Annotated. Utilization of this Section in no way implies that GWA has breached the Contract by exercise of the Termination for Convenience Clause.

11.2.4 Compensation Under Termination for Convenience. The Contractor shall perform the following for compensation under termination for convenience.

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

(b) The GWA General Manager and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by 2 G.A.R. § 3118 and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by GWA, the proceeds of any sales of supplies and manufacturing materials, and the Contract price of the work not terminated.

(c) Absent complete agreement under Subparagraph (b) of this Paragraph, the GWA General Manager shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:

i. Contract prices for supplies or services accepted under the contract;

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

iii. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 11.2.4 of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;

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

(d) Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with the Guam Procurement Code. All references in said regulations to "seller" shall be deemed to refer to "contractor" herein.

11.3 Termination for Default.

11.3.1 Default. If the Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this contract, the GWA General Manager may notify the Contractor in writing of the delay or non-performance and if not corrected in ten days or any longer time specified in writing by the GWA General Manager, such officer may terminate the Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the GWA General Manager may procure similar supplies or services in a manner and upon terms deemed appropriate by the GWA General Manager. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess cost incurred on procuring similar goods or services.

11.3.2 Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from the GWA General Manager, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which GWA has an interest.

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

11.3.4 Excuse for Non-Performance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the GWA General Manager within fifteen (15) days after the cause of the delay and the failure arises out of an act of a third party and/or cause(s) constituting a "force majeure" or "act of god" as defined in Section 18 – Force Majeure.

11.3.5 Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable, the rights and obligations of the parties shall, if the Contract contains a clause providing for termination for Convenience of GWA, be the same as if the notice of termination had been issued pursuant to such clause.

11.3.6 Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

11.3.7 Termination by Contractor. If, within sixty (60) days after payment of a proper and correct invoice is due from GWA to Contractor, and upon ten (10) days written notice from Contractor to GWA, Contractor may terminate this Agreement.

11.4 Work Product. Upon such termination of this Contract, all briefs, reports, summaries, completed work, and work in progress, and such other information and materials as may have been accumulated by Contractor in performing this Contract shall, in the manner and to the extent determined by GWA, become the property of and be delivered to GWA. Contractor may retain a copy of all work that it produces but shall not distribute or disseminate any data deemed at any time by law, rules or by GWA to be confidential. At all times any map or document that shows or indicates verbally the location and the setup or configuration of any portion of the wastewater system shall be deemed confidential pursuant to vulnerability

assessment requirements and GWA policy.

11.5 Extension. This Contract may be extended only upon the written mutual consent of the parties and upon the terms and conditions negotiated between the parties. The provisions of any such renewal term will be in accordance with the written Contract between the parties.

11.6 No Continuing Obligations. Upon termination of this Contract, as herein above provided, neither party shall have any further obligation hereunder except for (i) obligations accruing prior to the date of termination, and (ii) obligations, promises or covenants which are expressly made to extend beyond the term of this Contract.

11.7 Bankruptcy. GWA shall have a right to terminate this Contract if Contractor, its parent or any subsidiary thereof files a petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, dissolution or similar relief under any law or regulation relating to bankruptcy, insolvency or the rights of creditors generally.

SECTION 12 – RELATIONSHIP OF THE PARTIES

12.1 Personnel of Contractor. Contractor may provide, upon prior written consent of GWA, additional experienced professional personnel, hereinafter referred to as "Employee," if required during the performance of the Services hereunder. Employee shall be under Contractor's sole and exclusive direction and control, and for no purposes shall such Employee be considered an employee of GWA. However, GWA retains the right to reject any employee of Contractor who in the opinion of GWA either lacks the skills and qualifications to perform the assigned job or who otherwise does not conform to GWA's needs. Contractor shall remain at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state and municipal taxes chargeable or assessed with respect to Contractor's employees, including but not by any way of limitation, social security, unemployment, federal and state withholding, and other taxes. Contractor shall also be responsible for and pay all compensation and/or any reimbursements due Employee, and no additional amounts shall be due from the

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Authority. GWA may, at its discretion, request that an Employee (initial or additional) proffered by Contractor be replaced in the event that GWA determines that such Employee lacks the requisite experience or expertise.

12.2 Duty To Inform Employees. It is Contractor's duty and obligation to inform Employees of (1) applicable GWA rules and regulations; and (2) the proprietary nature of information and the need to guard its secrecy.

12.3 Independent Contractor Status. It is expressly understood and agreed that, in the performance of Services under this Contract, Contractor and its personnel/employees shall at all times act as an independent contractor with respect to GWA, and not as an employee or agent of GWA except that Contractor does have a "Joint Operating Agreement with GWA for the purposes of 11 G.C.A. 26203(35). Further, it is expressly understood and agreed by the parties aside from complying with the terms of 11 G.C.A. 26203(35), that nothing contained in this Contract shall be construed to create a partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Contract.

12.4 Provision of Listing of Personnel/Contractors/Subcontractors. Contractor shall provide GWA with a listing of the name and address of all personnel, contractors or subcontractors utilized by it for this project within seven (7) days of the hiring or engagement of such personnel, contractor or subcontractor by Contractor.

12.5 No Employment Benefits To Contractor. There shall be no employee benefits to Contractor occurring from this Contract including, but not limited to the following:

- (a) Insurance coverage provided by GWA.
- (b) Participation in the Government of Guam retirement system.
- (c) Accumulation of vacation leave or sick leave.

12.6 No Withholding By GWA. There shall be no withholding of payroll taxes or any other tax by GWA for Contractor's employees.

12.7 No Employment Benefits To Contractor, Its Employees Or Personnel. No person providing services on behalf of Contractor pursuant to this Contract shall have any claim under this Contract or otherwise against GWA for salary, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind. Contractor understands and agrees that (i) its employees or personnel who provide services under this Contract will not be treated as GWA employees for tax purposes, (ii) GWA will not withhold on behalf of Contractor's employees or personnel any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of GWA, and (iii) all of such payments, withholdings, and benefits, if any, are the sole responsibility of Contractor.

12.8 Payment of Taxes. Contractor will be responsible for paying all taxes applicable to them as an independent contractor, including but not limited to, corporate income tax, or any other tax which may become due.

12.9 Loss of Tax Status. Notwithstanding any language contained herein, under no circumstances will Contractor structure any compensation for any services hereunder that would cause the Guam Waterworks Authority to lose any tax benefit or tax exempt status under the Internal Revenue Code of the United States or the tax laws of Guam applicable hereto. It shall bear the responsibility of Contractor to comply with this provision and to pay any and all amounts due to GWA for actual damages as a result of losing such status.

SECTION 13 – OWNERSHIP OF INFORMATION, DATA AND DOCUMENTS

13.1 Title. Title to, ownership and copyright in all deliverables shall vest in GWA, and such materials shall be delivered to GWA upon completion of the Services or upon request of

GWA. Contractor shall obtain and/or execute any necessary documents for GWA to perfect or protect such ownership. Any materials retained by Contractor shall be treated in accordance with GWA's Record Retention Policy.

13.2 Previously Created Materials. Ownership of materials previously created by Contractor, which may be used as part of the Services, shall continue to be property of Contractor.

13.3 Conveyance To GWA. The entire right, title and interest, including copyright in all deliverables hereunder shall be transferred to and vested in GWA. The parties expressly agree to consider as works made for hire those works ordered or commissioned by GWA, which qualify as such in accordance with copyright laws. For all such original works, Contractor agrees to provide documentation satisfactory to GWA to ensure the conveyance of all such right, title and interest, including copyright, to GWA.

13.4 Proprietary Rights Indemnification. Contractor warrants that any material furnished by Contractor will not infringe upon or violate any copyright, trade secret or any other proprietary right of any third party.

SECTION 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION

14.1 Protection of Trade Secret. Contractor and its employees upon coming into contact with or receiving directly from GWA confidential and/or trade secret information, will be bound by any protective order relating to this information. Contractor and employees will treat all information received by it during the term of this Contract as strictly confidential and will not disclose such information in any form, to third parties or internally within Contractor's firm to employees without a need to know such information, without the express written permission of GWA. Confidential information, whether magnetically stored or not must be secured. Contractor will control access to such material and ensure that no breach of confidentiality occurs. Contractor, on receiving requests or orders for information in the form of questions, interrogatories, etc. from non GWA sources, will advise GWA immediately by telephone and

follow-up by providing copies of such requests.

14.2 Proprietary Information. Any information, whether or not protected by patent or copyright, including, but not limited to, software programs, files, specifications, drawings, sketches, models, samples, tools, business information, technical information or other data, written or otherwise (hereinafter "Information"), which has been furnished or disclosed to Contractor shall remain GWA's property and shall be treated by Contractor as being proprietary information. Information shall not be reproduced, published or disclosed to any third party; or utilized by Contractor for any other purposes without the prior written consent of GWA. All copies of the information shall be returned to GWA immediately upon request after the conclusion of Services; provided, however, that Contractor may maintain the professionally mandated work paper record of its Services.

14.3 Previous Information. Contractor shall have no obligation to preserve the proprietary nature of any information, which was previously known to Contractor free of any obligation to keep confidential; or is disclosed to third parties by GWA without restriction; or is or becomes publicly available by other than unauthorized disclosure.

SECTION 15 --ACCESS TO RECORDS AND OTHER REVIEW

Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its offices at all reasonable times during the Contract period and for three (3) years from the date of the final payment under this Contract, for inspection by the Authority.

SECTION 16 -- INSURANCE

16.1 Insurance Required. Contractor shall not commence work under this Contract until he has obtained all insurance required under this section and GWA has approved such insurance, nor shall the Contractor allow any Subcontractor to commence work on this

subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. Contractor shall maintain all required insurance at all times during the course of the work and provide proof of such at all times. In the event that any policy is cancelled for any reason, Contractor shall provide immediate written notice to GWA of such an event and immediately provide a replacement policy for the same limits and terms are required hereunder. All insurance policies provided hereunder shall contain an explicit term which provides for a "waiver of subrogation" against GWA.

16.2 Contractor's and Subcontractor's Insurance. Prior to commencing work, Contractor shall obtain and thereafter maintain during the course of the work Insurance with companies acceptable to GWA and who are licensed to provide insurance on Guam. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. The limits of insurance shall be as follows unless a higher limit is required by statute or Contractor determines that it needs higher amounts to provide adequate coverage:

1. General Liability including products, completed operations and contractual coverage for this Contract in the amount of \$1,000,000.00 combined limit. GWA shall be specifically listed on the policy as an additional named insured.
2. Auto liability covering bodily injury and property damage in the amount of \$1,000,000.00 combined single limit. GWA shall be specifically listed on the policy as an additional named insured
3. Excess liability with limits of at least \$5,000,000.00. GWA shall be specifically listed on the policy as an additional named insured.
4. Worker's Compensation and Employer's liability - Statutory limits. Add Waiver of Subrogation endorsement in favor of GWA.
5. Builder's Risk or Installation Floater, when applicable, is to be furnished by Contractor. If applicable, GWA shall be specifically listed on the policy as an additional named insured.

16.3 Certificate of Insurance. Contractor shall furnish certificates of insurance and

waiver of subrogation endorsement to owner prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (10) days after receipt of written notice to owner. At all times Contractor's insurance shall be primary to any other insurance that may be carried by GWA. The statement of limits of insurance coverage shall not be construed as in any way limiting the Contractor's liability under this Contract. GWA shall be specifically listed as an additional insured party on all liability coverage and certificates of insurance shall clearly indicate such.

16.4 Insurance Company and Agent. All insurance policies herein required of the Contractor shall be written by a company duly authorized and licensed to do business in Guam and be executed by some agent thereof duly licensed as an agent in Guam.

SECTION 17 – INDEMNITY, DAMAGES AND LIABILITIES

17.1 Indemnity

a) Accident or Injury During Travel. GWA assumes no liability for any accident or injury that may occur to Contractor, its agents or employees, dependents or personal property while en route to or from Guam or during any travel mandated by the terms of this Contract.

b) GWA shall indemnify and hold harmless the Contractor from and against any environmental claim and liability that arose from or with respect to all circumstances relating to the Wastewater System and/or the Site occurring or existing before the Commencement Date. However, should the Contractor become aware of the occurrence of a prior environmental claim and liability and it can assist in mitigating the liability, Contractor shall take whatever steps are reasonably necessary to avoid such liability. In the event the all or any portion thereof of the costs for remediation are not related to O&M expenses, the Contractor shall immediately notify GWA and within ten (10) calendar days the parties shall meet to discuss possible solutions and resource needs. GWA shall have sixty (60) days following said notification to find a solution and to provide funds or other resources necessary to mitigate/remediate such environmental

claim and liability otherwise GWA shall be liable for all such liability arising from said situation.

c) Each Party shall indemnify and hold the other Party, and its officers, directors, affiliates, agents, employees, contractors and sub-contractors, harmless from and against all claims, judgments, losses, liabilities, costs, expenses or damages of any kind or character caused by any act or omission of the indemnifying Party or that Party's own officers, directors, affiliates, agents, employees, contractors or sub-contractors arising out of, or connected with, the performance of this Agreement resulting in physical loss or damage to property or in death or injury to person.

d) Any payment by an indemnifying Party under Section 17.1 shall be net of any insurance proceeds or any compensation paid to the indemnified Party that relates to the same set of facts or circumstances giving rise thereto.

17.2 Damages and limitation of liabilities.

a) Mitigation of Loss

In all cases the Party establishing or alleging a breach of contract or right to be indemnified in accordance with this Agreement shall be under a duty to take all reasonable measures to mitigate the loss which has occurred, provided that it can do so without unreasonable inconvenience or cost. A Party shall indemnify the other Party for all expenses reasonably incurred by that other Party in mitigating the loss.

b) Damages under this Agreement

1. If Contractor breaches its obligations under this Agreement, GWA is entitled to receive liquidated damages or penalties from Contractor in the amount set forth in Bid Documents or in this Contract.

2. The Parties expressly acknowledge and agree that any penalty set forth in the Bid Documents and/or the Agreement applied to the Contractor shall be assimilated to liquidated damages, i.e. being a fair and reasonable estimate of such damage suffered by GWA. Irrespective of

the language used in the Agreement and Bid Documents, liquidated damages contemplated herein are not intended as a forfeiture or a penalty. Accordingly, it is understood and agreed that payment of a penalty shall be GWA's sole and exclusive remedy for damages with respect to those deficiencies in the Contractor's performance of the services to which the penalty applies pursuant to this Clause.

The maximum aggregate amount of penalties payable by the Contractor for the duration of the Agreement shall in no event exceed 100% of the fixed management fee in the year the liability arose. Said penalty cap shall be in addition to any payments made by any insurance company for the acts or omissions by Contractor covered under this Section.

3. Contractor's total liability for the duration of this Agreement with respect to all claims of any kind (including but not limited to penalties) relating to this Agreement or the subject matter hereof, whether as a result of breach of the Agreement, warranty, indemnity, tort, strict liability or otherwise, shall in no event exceed an overall aggregate amount equivalent to 100% of the fixed management fees for the year in which the liability arose. Said liability cap shall be in addition to any payments made by any insurance company for the acts or omissions by Contractor covered under this Section.

c) Consequential Damages. Unless expressly provided for in this Contract, neither party, including their agents and employees, shall be liable to the other party for consequential damages including, but not limited to, loss of use, loss of profit and interest due to breach of contract, breach of warranty, negligence, or any other cause whatsoever, provided nothing herein shall relieve Contractor from its liability for injury to persons or property, including property of GWA, whether such liability arises in contract, including breach of warranty or tort, including negligence.

SECTION 18 – FORCE MAJEURE

18.1 Force Majeure. Force Majeure referred to herein shall mean an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy, expropriation or confiscation; Changes in Law, war,

rebellion, or riots; floods, unusually severe weather that could not reasonably have been anticipated; fires, explosions, epidemics, catastrophes, or other similar occurrences which are not within the control of the party affected. However, the following shall not be considered as Force Majeure:

(a) Delay caused by lack or inability to obtain raw materials, congestion at Contractor's or its subcontractor's facilities, or elsewhere; market shortages, or similar occurrences, or

(b) Delay, either on the part of Contractor or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or

(c) Sabotage, strikes, or any other concerted acts of workmen which occur only in the facilities of Contractor or its subcontractors. Should the circumstances of Force Majeure continue over a period of ninety (90) days, GWA has the right, if no other understanding is reached, to terminate the whole Contract or any part thereof in accordance with Section 11 - Termination. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Purchase Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

18.2 Invocation of Force Majeure. The party invoking Force Majeure shall:

(a) Notify the other party as soon as reasonably possible in writing delivered in person or by facsimile of the event and the anticipated exposure time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the Contract;

(b) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;

(c) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

18.3 Delivery Time and Force Majeure. Only a Change Order may change contractual Delivery Times. Contractor shall file all claims for an extension in the Delivery Time in a

manner as provided for other claims to be filed under this Contract.

The Delivery Time will be extended in an amount equal to time lost due to delays caused by Force Majeure if a claim is made therefore as provided as provided herein.

Any reasonable mitigation costs incurred by the Contractor due to a Force Majeure event shall be promptly reimbursed by GWA based on the relevant evidencing documentation.

Notwithstanding the foregoing, all time limits stated in this Contract and the Bid Documents are of the essence in this Contract.

SECTION 19 – WARRANTY

Contractor's obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Contract is absolute, and Contractor warrants and guarantees to GWA that all Goods will be in accordance with the Bid Documents and this Contract and will be new, fit for the purpose for which they are intended and free from any defects, including faulty design, materials, or workmanship.

Contractor shall provide to GWA with all warranties and guarantees in writing. GWA and the Contractor shall negotiate the manner in which claims against these warranties are addressed including any remedies for non-responsiveness. This may include retention of Contract amounts, performance bonds, etc.

Contractor shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods within twelve (12) months from the date on which GWA has placed the Goods in continuous service, or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract or other warranty provided by any manufacturer of goods.

Any part(s) supplied in replacement of the defective part(s) of the Goods or any Goods repaired pursuant to the provisions of this Section shall be supplied or repaired on the same terms and conditions as provided for herein for the supply of the Goods and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date such goods were placed into service or under any other warranty which

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may be provided, whichever is later.

Contractor is to be the warranty administrator for all goods and services provided hereunder and at all times during the Contract period.

In the event the Contractor furnishes special services for installation and startup, such services shall be rendered in a competent and diligent manner and in accordance with the Contract Documents, accepted industry practice and any applicable professional standards.

SECTION 20 – TESTS AND INSPECTIONS

20.1 GWA or its designee shall have the right to inspect or observe the production, inspection, or testing of the Goods at any time and place including the Contractor's facilities and those of its subcontractors where the Goods are being produced.

20.2 Contractor shall conduct, at its responsibility and expense, all tests and inspections called for by the Bid and the Contract. In the event that a witnessed inspection by GWA is required under the Contract, the costs and expense arising therefrom shall be borne by the Contractor, including inspector's fees, transportation, hotel, and general flying expenses. In the event that Contractor's inspection is required at the site, Contractor's transportation, hotel, and general living expenses shall be borne by the Contractor.

20.3 Any inspection made by the inspector of GWA and/or its designee will be final. Such inspections or the witnessing of Contractor's test and inspection by GWA and/or its designee shall not relieve Contractor of any of its responsibilities or liabilities under the Contract, nor be interpreted in any way as implying acceptance of the Goods.

SECTION 21 – DEFECTS IN GOODS AND SERVICES

21.1 Remediating Defective Goods. If at any time after GWA's acceptance of delivery and before the expiration of the correction period, GWA determines that the Goods are defective and provides Contractor with a written reasonable determination therefore, Contractor shall, upon written notice from GWA, do all things necessary, at its expense, to make good the defects

as soon as possible after being notified to do so by GWA. Contractor warrants that Contractor, unless otherwise agreed, shall remedy any defects.

It is understood, that if so instructed by GWA, Contractor shall make shipment by the fastest available method.

In the event that Contractor does not take prompt action to fulfill its obligations hereunder as required by GWA and to the satisfaction of GWA, GWA may, after ten (10) days written notice to Contractor, and without prejudice to any of its rights under the Contract, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge Contractor for the costs of the work. In an emergency where delay would cause serious risk of loss or damage, GWA may take such action without prior notice to or waiting for action by Contractor.

21.2 Remedying Defective Special Services. If at any time GWA notifies Contractor in writing that any of the Special Services are defective, Contractor shall promptly provide acceptable services as provided in Section 21.3 below. If Contractor fails to do so, GWA may obtain the Special Services elsewhere.

21.3 Cost of Remedying Defects. All costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GWA's rights and remedies will be charged against Contractor and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by Contractor to GWA. Such costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of GWA or others destroyed or damaged by correction, removal, or replacement of defective Goods. Contractor shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GWA of GWA's rights and remedies under this paragraph.

SECTION 22 – CHANGE ORDERS

22.1 Change Order. By a written order, at any time, and without notice to surety, the GWA General Manager may, subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

(a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for GWA in accordance therewith;

(b) Method of shipment or packing; or

(c) Place of delivery.

GWA may at any time request changes in the services to be performed hereunder.

22.2 Time Period for Claim. Within 30 days after receipt of a written Change Order under this section, unless the GWA General Manager extends such period in writing or e-mail, The Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless GWA is prejudiced by the delay in notification.

22.3 Claims Barred After Final Payment. No claim by the Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

22.4 Others Claims Not Barred. Nothing in this clause shall be deemed to restrict the Contractor's right to pursue a claim arising under the Contract if pursued in accordance with the clause of the Bid Documents entitled "Claims based on the General Officer's Actions or Omissions, - Notice of Claim", or for breach of Contract.

SECTION 23 – SUCCESSORS AND ASSIGNMENTS

This Contract is binding upon the parties hereto and their respective heirs, successors and assigns. However, Contractor shall not assign, subcontract or otherwise transfer this Contract, its interests herein or its responsibilities and duties hereunder without the prior express written consent of GWA and the Consolidated Commission on Utilities. For purposes of this section,

any change in ownership of Contractor or its corporate entity shall be deemed an assignment or transfer under this section. "Change in corporation entity" includes any sale or transfer of shares, the organization of corporate structure, alteration of the current ownership and organization of Contractor.

SECTION 24 – REPRESENTATIVES OF GWA

The GWA representative, for the purpose of this Contract, shall be the Assistant GWA General Manager for Production and Treatment, or such other person as GWA from time to time may designate in writing. Whenever approval or other authorization, or communication or submission to GWA is required by the terms of this Contract, such request for approvals, authorizations, communications or submissions, shall be directed to the GWA representative and then executed by the GWA General Manager. However, the Consolidated Commission on Utilities reserves full authority to review or resolve any matter arising hereunder.

SECTION 25 – PROFESSIONAL RELATIONSHIP

Contractor has undertaken a limited review of its records to determine its professional relationships with persons and entities in the utilities industry, and based upon that review, represents that it has the right to enter into this Contract and it is not precluded from performing the Services to be provided hereunder. Contractor will notify GWA immediately if any additional relationships come to its attention. However, given Contractor's size, complexity, geographic dispersion and number of clients, it cannot assure GWA that all of such relationships have or will come to light.

SECTION 26 – PERFORMANCE BOND

Contractor shall submit to GWA a one hundred percent (100%) performance bond within fourteen (14) days after the receipt of the Notice of Award, or at some other time designated by GWA in writing, in the amount of 100% of the contract price for the Fixed Management Fee, payable to GWA in the form of a surety bond, surety company or surety bond acceptable to GWA's bankers, or a cash deposit in a local bank approved by GWA and callable upon proper

demand. A performance bond is required in order to assure that Contractor will perform the terms and conditions of the Contract, and that Contractor will provide against damages that may be suffered during the duration of the Contract. The required performance bond shall be in such form that GWA shall approve in its absolute discretion. Failure to furnish a performance bond at the time specified above and in the manner as provided shall be grounds for cancellation of Contract. Upon acceptance of the performance bond by GWA, GWA will promptly release the Bid Bond. The performance bond shall be released following complete performance of this Contract (performance includes the conclusion of claims and disputes).

SECTION 27 – DISPUTE RESOLUTION

27.1 Regular Meetings. Throughout the term of this Contract representatives of GWA and the Contractor shall meet regularly to discuss the progress of the projects in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

27.2 Informal Resolution. The parties hereto agree that in the event that there is any dispute or difference between them arising of this Contract or in the interpretation of any of the provisions hereof, they shall endeavor to meet together in an effort to resolve such dispute by discussion between them, but failing such resolution within 30 days of the dispute notice, the GWA General Manager and the highest ranking manager from Contractor on Guam and having authority to resolve disputes, shall meet to resolve any differences and the joint decision of such these officials shall be binding upon the parties hereto. In the event that a settlement of any such dispute or difference is not reached pursuant to this sub-clause within 45 days, then the provisions of Section 27.3 shall apply. The parties agree that either side may seek the advice of legal counsel or bring legal counsel to such meetings.

27.3 Formal Claims. Where any dispute is not resolved as provided for in Sections 27.1 and 27.2 it shall be resolved pursuant to the Guam Procurement Law 5 GCA, Section 5001 et. seq. and the Government Claims Act, 5 GCA Section 2001 et. seq.

27.4 Continuing Performance. Contractor shall continue its performance under the

Contract during all claims, disputes or other disagreements, with GWA. Production of Services or Goods will not be delayed or the timely delivery of Goods or furnishing of Services be prejudiced, delayed, or postponed pending resolution of any claims, disputes, or Contracts, except as Contractor and GWA may otherwise agree in writing.

SECTION 28 – MISCELLANEOUS

28.1 No Inducements. Each party to this Contract acknowledges that no representation, inducements, promises or Contracts, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no Contract, statement, or promise not contained in this Contract, shall be valid or binding.

28.2 Modifications. Any modification of this Contract will be effective only if it is in writing signed by the both parties hereto.

28.3 Approval By The Commission. For the purpose of this Paragraph and of the entire Contract, the signature of either the Chairman of the Consolidated Commission on Utilities or the GWA General Manager are the only signatures that will bind GWA. GWA shall not be liable to Contractor for any work performed by Contractor prior to the formal approval of this Contract by the Consolidated Commission on Utilities and Contractor hereby expressly waives any and all claims for Service performed in expectation of this Contract prior to its approval by the Consolidated Commission on Utilities.

28.4 Compliance. Contractor shall be required to comply with all Federal laws, ordinances, rules and regulations as well as Guam laws, ordinances, rules and regulations applicable to the Services provided.

28.5 Notices. Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and shall either be delivered personally or shall be deemed to be delivered seven (7) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective



address indicated below, or at such other address as may be theretofore been specified by written notice delivered in accordance herewith (electronic notices are not allowed):

TO CONTRACTOR:

VEOLIA WATER COMPANY
336 ROUTE 8, SUITE 4
BARRIGADA, GUAM 96913

TO GWA:

General Manager
Post Office Box 3010
Hagåtña, Guam 96932

28.6 Non-waiver. Either party to this Contract shall not consider any provisions of this Contract waived unless it gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of such Party under the provisions of this Contract, unless otherwise expressly stipulated therein. Failure of a Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of either Party to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of either party to exercise any acts, rights, or remedies provided herein or by law shall not relieve Contractor of liability under any guarantees or of obligations under the Contract and shall not be deemed a waiver of any right of such Party to insist upon strict fulfillment of the Contract or of any of such Party's rights or remedies as to the Goods or special services furnished.

28.7 Governing Law and Disputes. This Contract has been entered into on Guam and all services and goods under this Contract shall be purchased or rendered on Guam and as such, this Contract shall be governed by and construed in accordance with the laws of Guam and all applicable federal laws. Notwithstanding any conflict of law doctrine, all disputes involving the interpretation of the Bid or this Contract shall be brought in the Courts of Guam.

28.8 Invalid Provisions. If any provision of this Contract is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Contract shall, to the extent possible and without destroying the intent of this Contract, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

28.9 Time. Time is of the essence in the Contract and in every part hereof.

28.10 Computation of Time. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or a day made a legal holiday by a law of Guam, such day will be omitted from the time computation.

28.11 Language and Trade Terms. All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents.

28.12 Rights and Remedies. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto, will be in addition to, and shall not be construed in any way as a limitation of any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents will survive final

payment and termination or completion of this Contract.

28.13 New material. Unless this Contract specifies otherwise, the Contractor represents that the Goods and components are new. If the Contractor believes that furnishing used or reconditioned Goods or components will be in GWA's interest, the Contractor shall so notify GWA in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to GWA if GWA authorizes the use of used or reconditioned Goods or components.

28.14 Further Assurances. Each party hereto agrees to do all acts and things to make, execute and deliver such written instruments, as shall from time to time be reasonably required to carry out the terms and provisions of this Contract.

28.15 Counterparts. This Contract may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.

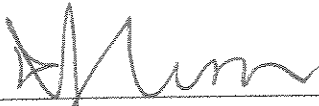
28.16 Severability. If any work, phrase, clause, article, or other provision of this Contract is or is deemed or adjudicated or otherwise found to be against public policy, void, or otherwise unenforceable, then said work, phrase, clause, article, or other provision shall be deleted or modified, in keeping with the express intent of the parties hereto as necessary to render all the remainder of this Contract valid and enforceable. All such deletions or modifications shall be the minimum necessary to affect the foregoing.

28.17 Survival of Provisions. In order that the Parties may fully exercise their rights and perform their obligations hereunder, such provisions of this Contract that are required to insure such exercise or performance shall survive the termination of this Contract for any cause whatsoever during five (5) years, except in the event of fraud.

28.18 Language Not to be Construed Against the Drafter. No provision in this Contract is to be construed for or against any Party because the Party or its counsel drafted such provision.


IN WITNESS WHEREOF, the parties hereto have entered into this 54 numbered page Contract on the dates indicated by their respective names.

AUTHORIZED PMC OFFICIAL:

By: 
David Cox
Veolia Managing Director

Date: 5/12/06

GWA OFFICIAL

By: 
David R. Craddick
GWA General Manager

Date: 12/5/06

Certified Funds Available:

By: 
Gilda Mafnas
Certifying Officer

Date: 12/05/06

Approved as to Legality

By: 
Graham Botha
GWA Legal Counsel

Date: 12/5/06

Guam Business License or Certificate of Authorization No.: SR L No.: 0721690 ^{Guam Business License}

Contract No.: GWA-07-02

Vendor No.: 22018

Contract Amount: \$3,120,805.00

***** END OF FORMAL CONTRACT *****



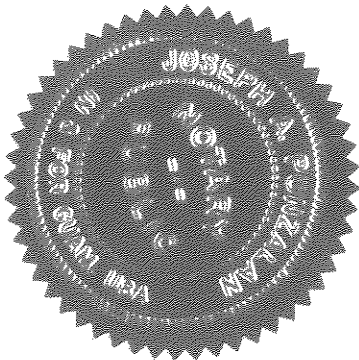
IN THE CITY OF)
TAMUNING, GUAM)
_____)
_____)

ss:

On this 5th day of DECEMBER, 2006, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared GRAHAM BOTHA, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)



Joseph A. Punzalan
Notary Public in and for Guam

JOSEPH A. PUNZALAN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: August 19, 2007
P.O. Box 3010 Agaña, Guam 96932

[Handwritten marks]

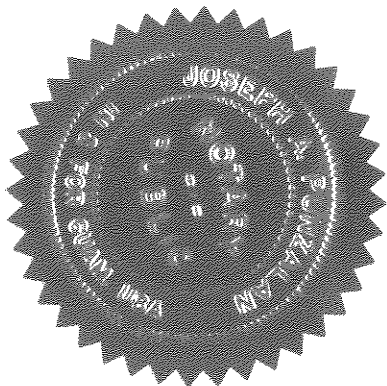
IN THE CITY OF)
TAMUNING, GUAM)
_____)

SS:

On this 5th day of DECEMBER, 2006, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared GILDA MAFNAS, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)



Joseph A. Punzalan
Notary Public in and for Guam

JOSEPH A. PUNZALAN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: August 19, 2007
P.O. Box 3010 Agaña, Guam 96932

[Handwritten signatures]

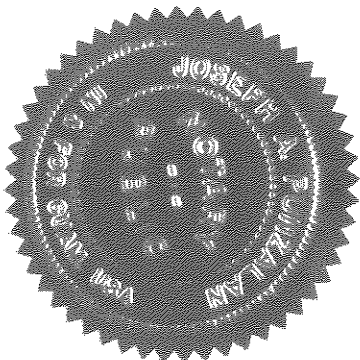
IN THE CITY OF)
TAMUNING, GUAM)
_____)

ss:

On this 5th day of DECEMBER, 2006, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared DAVID R. CRADDICK, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)



Joseph A. Punzalan
Notary Public in and for Guam

JOSEPH A. PUNZALAN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: August 19, 2007
P.O. Box 3010 Agaña, Guam 96932

[Handwritten signatures]

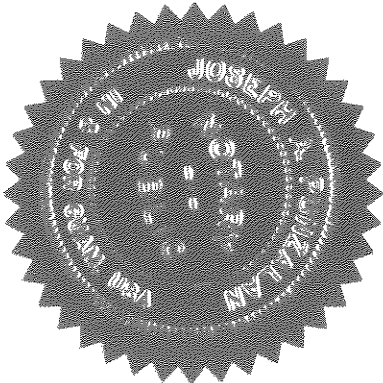
IN THE CITY OF
TAMUNING, GUAM

SS:

On this 5th day of DECEMBER, 2006, before me, a Notary Public of Guam, duly commissioned and sworn, personally appeared DAVID COX, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

(SEAL)



Joseph A. Punzalan
Notary Public in and for Guam

JOSEPH A. PUNZALAN
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: August 19, 2007
P.O. Box 3010 Agaña, Guam 96932

[Handwritten marks]