

AGREEMENT
BETWEEN
I MINA'TRENTAI OCHO NA LIHESLATURAN GUÁHAN
(38th Guam Legislature)

AND
VICTOR GARCIA
DEMOLITION AND REMOVAL OF OLD HAGATNA MAYOR'S OFFICE

THIS AGREEMENT (this "Agreement") is entered into by and between the ***I MINA'TRENTAI OCHO NA LIHESLATURAN GUÁHAN (38th Guam Legislature)***, whose address is 163 Chalan Santo Papa, Guam Congress Building, Hagatna, Guam 96910 (the "Legislature"), and **VICTOR GARCIA, General Contractor**, authorized and licensed to do business in Guam, whose address is 145 Linda Way, Tamuning, Guam 96913, also known as ("Contractor"), with reference to the following facts:

RECITALS:

A. The Legislature previously issued a Request for Quotation seeking construction work for the **DEMOLITION AND REMOVAL OF THE OLD HAGATNA MAYOR'S OFFICE**. A copy of the Request for Quotation, which is attached to this Agreement as **EXHIBIT "A"** and incorporated herein by this reference (the "RFQ").

B. Pursuant to the RFQ, the Legislature solicited quotes from qualified bidders for the Demolition and Removal of the Old Hagatna Mayor's Office.

C. Contractor responded to the RFQ by submitting a quote to provide the services described in the RFQ, a copy of which is attached to this Agreement as **EXHIBIT "B"** and incorporated herein by this reference (the "Quote"), and was selected by the Legislature as the lowest and most responsible and responsive qualified quote.

D. The Legislature and Contractor have agreed to execute this Agreement in order to memorialize the terms and conditions on which Contractor shall provide the demolition and removal services to the Legislature.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. SERVICES TO BE PERFORMED

1.1 Scope of Work. Contractor shall provide the services identified in the Request for Quotation of the RFQ (Exhibit "A") and set forth below.

PROJECT DESCRIPTION:

The Old Hagatna Mayor's Office is located near the Academy of Our Lady of Guam in Hagatna.

The conditions of Old Hagatna Mayor's Office have deteriorated further and structurally unsafe that requires demolition and removal of Old Hagatna Mayor's Office.

SCOPE OF WORK:

Scope shall be but not limited to the following:

1. The contractor will be responsible for demolition, removal, and proper disposal of all debris and waste materials as well as contents of the existing vacant building.

- a. Provide all labor, materials, equipment, tools and supervision to complete the project.
- b. Obtain proper permits and clearances by regulatory agencies prior to the commencement of work.
- c. Assess any hazardous materials and plan for removal and proper disposal.
- d. Properly secure access to all existing utilities.
- e. The building's foundation will remain.
- f. Large tree on site shall not be removed.

2. Dust mitigation and control must be present throughout the demolition process.

3. The contractor will be responsible for all costs of transport and proper disposal of all demolition debris and waste materials off-site and restoration of jobsite.

4. The contractor will provide a project timeline to the Properties and Facilities Manager for approval prior to the commencement of work. Such timeline must include, but not be limited to, the following tasks:

- a. Coordinate with the maintenance personnel of the Academy of Our Lady of Guam on proposed schedule to minimize disruption to school operations.
- b. Coordinate with staff of the Archdiocese of Hagatna on proposed schedule to minimize disruption of church activities.
- c. Mobilize materials, personnel, tools and equipment needed to jobsite.
- d. Secure area prior to the start of work with adequate safety signage for traffic flow and foot traffic.

5. The contractor will coordinate with the Properties and Facilities Manager for authorization to access area.

The RFQ and the Quote are attached as Exhibit "A" and "B" respectively, and incorporated herein by reference. Contractor shall provide status reports on the services performed and required under this Agreement upon request by the Legislature. Contractor

acknowledges and agrees that failure to promptly and satisfactorily perform all the services required under this Agreement constitutes a material breach of this Agreement.

1.2 Contractor Provisions of Resources. Contractor agrees to furnish all qualified personnel, facilities, tools, equipment, materials and transportation to perform the services and work provided for in this Agreement. Contractor represents and warrants that it and its employees possess the professional and technical expertise and knowledge, resources and experience to perform the services described herein in a professional, skillful and diligent manner. The Legislature may, in its sole discretion, provide staff assistance to Contractor in furtherance of this Agreement. Contractor acknowledges and agrees that its employees, agents and all other personnel engaged to provide the services hereunder shall be informed of all relevant provisions of this Agreement.

1.3 Location of Services. Except as otherwise approved by the Legislature, the site for services rendered under this Agreement shall be the Old Hagatna Mayor's Office is located near the Academy of Our Lady of Guam in Hagatna.

1.4 Site Condition Contractor's Responsibility. Contractor accepts the conditions at the construction site as they eventually may be found to exist and warrants and represents that the services under this Agreement can and shall be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be solely at Contractor's own cost and expense, anything in this Agreement to the contrary notwithstanding.

2. TERM OF AGREEMENT

2.1 Completion of Services. This Agreement shall be effective on the last signature date set forth on the signature page below, and shall continue until Contractor completes all services required hereunder unless earlier terminated in accordance with the terms of this Agreement. Contractor shall commence the performance of services required hereunder upon its receipt of a Notice to Proceed issued by the Legislature, and Contractor shall complete all required services under this Agreement within **Twenty-one (21) days from the issuance of the Permit by the Department of Public Works to proceed with the demolition.**

2.2 Liquidated Damages. Contractor acknowledges and agrees that any delays in the completion of the services required hereunder shall subject Contractor to liquidated damages. For each day beyond the expiration of the Twenty-one (21) days period after the issuance of the Notice to Proceed, Contractor agrees to pay, not as a penalty but as liquidated damages, Thousand Dollars and Zero Cents (\$1,000.00) per day to the Legislature. The parties agree that the foregoing amount is a reasonable amount for liquidated damages under the circumstances existing at the time this Agreement is entered into and constitutes a reasonable estimate of damages to the Legislature for any delays in the completion of services.

3. COMPENSATION

3.1 Compensation. In consideration for the services performed under this Agreement, the Legislature shall pay to Contractor an aggregate amount equal to **NINETY-TWO THOUSAND DOLLARS (\$92,000.00)** in accordance with the terms and conditions set forth in this Agreement (the "Compensation"). The Compensation shall include any applicable Gross Receipts Tax.

3.2 Payment Terms

(a) **RFQ.** The Legislature shall pay the Compensation to Contractor in accordance with the terms set forth in the Quote.

(b) **Payment.** Payment shall be made upon satisfactory performance of all services required to be performed by Contractor under this Agreement. Contractor agrees to expressly waive the provision of section 82602 of Title 18, Guam Code Annotated, which states:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor

3.3 Expenses. Contractor shall be solely responsible for all expenses incurred in the performance of services under this Agreement.

3.4 No Compensation Prior to Approval of Agreement. Contractor hereby waives any and all claims for any services performed by Contractor prior to (i) the full execution of this Agreement by all parties, and (ii) Contractor's receipt of a Notice to Proceed issued by the Legislature.

3.5 United States Currency. The Compensation payable to Contractor shall be in the currency of the United States.

4. TERMINATION OF AGREEMENT

4.1 By the Legislature - Termination for Convenience

(a) **Termination.** The Legislature may, when the interests of this territory so require, terminate this Agreement in whole or in part, for the convenience of the territory. The Legislature shall give written notice of the termination to Contractor specifying the part of this Agreement terminated and when termination becomes effective.

(b) **Contractor's Obligations.** Contractor shall incur no further obligations in connection with the terminated services and on the date set in the notice of termination Contractor shall stop services to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated services. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the

terminated services. The Legislature may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to the Legislature. Contractor must still complete the services not terminated by the notice of termination and may incur obligations as necessary to do so.

(c) Right to Construction and Supplies. The Legislature may require Contractor to transfer title and deliver to the Legislature in the manner and to the extent directed by the Legislature:

(i) any completed construction; and

(ii) such partially completed construction, supplies, materials, parts, tools, dies, jigs, fixtures, plans, drawing, information, and agreement rights (hereinafter called "construction material") as Contractor has specifically produced or specially acquired for the performance of the terminated part of this Agreement. Contractor shall protect and preserve property in the possession of Contractor in which the Legislature has an interest. If the Legislature does not exercise its rights under this Section 4.1(c), Contractor shall use its best efforts to sell such construction, supplies, and construction materials in accordance with the standards set forth in 13 G.C.A. §2706. Contractor acknowledges and agrees that the exercise by the Legislature of its rights under this Section 4.1 shall not be deemed to be a breach of this Agreement.

(d) Compensation

(i) Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations, bearing on such claim. If Contractor fails to file a termination claim within one year from the effective date of termination, the Legislature may pay Contractor, if at all, an amount set in accordance with Section 4.1(d)(iii), below.

(ii) The Legislature and Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data submitted as required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed (x) the Compensation under this Agreement, plus reasonable settlement costs, *less* (y) any payments previously made by the Legislature, the proceeds of any sales of construction, supplies, and construction materials under Section 4.1(c), above, and the portion of Compensation remaining for services not terminated.

(iii) Absent complete agreement under Section 4.1(d)(ii), above, the Legislature shall pay Contractor the following amounts with respect to all services performed prior to the effective date of the notice of termination, provided that payments shall not be duplicated for any items set forth below pursuant to any other provision of this Agreement:

(A) the cost of such services plus a fair and reasonable profit on such portion of the services (such profit shall not include anticipatory profit or consequential

damages) less amounts paid or to be paid for completed portions of such services; provided, however, that if it appears that Contractor would have sustained a loss if the services would have been completed under this Agreement, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(B) the cost of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Section 4.1(b), above. These costs must not include costs paid in accordance with Section 4.1(d)(iii)(A), above.

(C) the reasonable settlement costs of 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 this Agreement and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Agreement. The total sum to be paid to Contractor under this Section 4.1(d)(iii) shall not exceed (x) the Compensation under this Agreement, plus settlement costs, *less* (y) any payments previously made by the Legislature, the proceeds of any sales of construction, supplies, and construction materials under Section 4.1(c), above, and the portion of Compensation remaining for services not terminated.

(iv) Cost claimed, agreed to, or established under Section 4.1(d)(ii) and (iii) shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

4.2 By the Legislature - Termination for Default

(a) Default. If Contractor refuses or fails to perform the services, or any separable part thereof, with such diligence as will assure its completion within the time specified in this Agreement, or any extension thereof, or fails to complete the services within such time, or commits any other substantial breach of this Agreement, and further fails within fourteen (14) days after receipt of written notice from the Legislature to cure such default or to commence and continue correction of such refusal within such other time provided by the Legislature in writing, the Legislature may, by written notice to Contractor, declare Contractor in breach and terminate this Agreement or any portion thereof. In such event the Legislature may take over the responsibility of performing the services and prosecute the same to completion, by contract or otherwise, and may take possession of, and utilize in completing the services, such materials, appliances, and plant as may be on the site of the services and necessary therefor. Whether or not Contractor's right to proceed with the services is terminated, Contractor and Contractor's sureties shall be liable for any damage to the Legislature resulting from Contractor's refusal or failure to complete the services within the specified time.

(b) Liquidated Damages upon Termination. If fixed and agreed liquidated damages are provided in this Agreement, and if the Legislature terminates Contractor's right to proceed, the resulting damage shall consist of such liquidated damages for such reasonable time as may be required for final completion of the services required hereunder.

(c) Liquidated Damages in Absence of Termination. If fixed and agreed liquidated damages are provided in this Agreement, and if the Legislature does not terminate Contractor's right to proceed, the resulting damage will consist of such liquidated damages until the services required hereunder are completed.

(d) Time Extension. Contractor's right to proceed shall not be so terminated nor Contractor charged with resulting damage if:

(i) the delay in the completion of the services arises from causes such as: acts of God; acts of the public enemy; acts of the territory, and any other territorial entity in either a sovereign or contractual capacity; acts of another contractor in the performance of a contract with the Legislature; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; unusually severe weather; delays of subcontractors due to causes similar to those set forth above; or shortage of materials; provided, however, that no extension of time will be granted for a delay caused by a shortage of materials, unless Contractor furnished to Legislature proof that Contractor has diligently made every effort to obtain such materials from all known sources within reasonable reach, and further proof that the inability to obtain such materials when originally planned did in fact cause a delay in final completion of the entire services which could not be compensated for by revising the sequence of Contractor's operations; and

(ii) Contractor, within ten (10) days from the beginning of any such delay (unless the Legislature grants a further period of time before the date of final payment under this Agreement), notifies the Legislature in writing of the causes of delay. The Legislature shall ascertain the facts and the extent of the delay and extend the time for completing the services when, in the judgment of the Legislature, the findings of fact justify such an extension.

(e) Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this Section 4.2, it is determined for any reason that Contractor was not in default under the provisions of this Section 4.2, or that the delay was excusable under the provisions of this Section 4.2, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Legislature's exercise of a termination for convenience under Section 4.1, above.

(f) Additional Rights and Remedies. The rights and remedies of the Legislature provided in this Section 4.2 shall be in addition to any other rights and remedies provided by law or under this Agreement.

4.3 Termination/Modification for Lack of Funds. The Legislature may terminate or modify this Agreement based upon a lack of funding. In such an event, the Legislature shall promptly provide notice to Contractor and within five (5) days of the notice, the parties shall renegotiate the terms of this Agreement in good faith. If the parties are unable to reach an agreement on the renegotiation, then either Party may terminate this Agreement pursuant to other provisions of this Section 4, as applicable.

4.4 By Contractor - Termination for Cause. Contractor may elect to terminate this

Agreement at any time for Cause, effective upon delivery of written notice of termination. For purposes of this Section 4.4, "Cause" shall mean the Legislature's failing to perform the duties and obligations imposed upon the Legislature hereunder and failing to cure such breach within five (5) days following delivery to the Legislature of written notice specifying the failures to perform, or, if such default cannot reasonably be remedied within such 5-day period, the Legislature fails to commence and diligently pursue remedial action within such 5-day period or fails to cure such default within ten (10) days following delivery to the Legislature of written notice specifying the failures to perform. Upon the termination of this Agreement in accordance with this Section 4.4, the Legislature shall be obligated to pay Contractor for the portion of Compensation accrued and payable with respect to the satisfactory performance of services for the period ending on the effective date of termination.

4.5 Preservation of Property. Notwithstanding any termination of this Agreement, and subject to any directions from the Legislature, Contractor shall take timely and reasonable and necessary action to protect and preserve the property in the possession of Contractor in which the Legislature has an interest.

4.6 Additional Provisions. The termination of this Agreement by any party pursuant to the provisions of this Section 4 shall not constitute, or be deemed to constitute, the waiver or release by such party of any rights or claims such party may have against the other party by reason of actions or omissions occurring on or before the effective date of termination. The parties acknowledge and agree that in the event of termination, the Legislature may issue a new Request for Quotation with respect to such terminated services.

5. CONTACT PERSON.

Contractor agrees that, during the term of this Agreement, it shall identify a primary contact person who is familiar with the services being performed hereunder and who shall be responsible for responding to the questions and direction of the Legislature. The contact person must be identified in writing within five (5) days after full execution of this Agreement by all parties. The Legislature reserves the right to request replacement of the contact person designated by Contractor under this Agreement.

6. CONFIDENTIALITY

6.1 Confidential Information. Contractor hereby warrants that it shall not disclose any documents, materials or information, whether verbal, written, recorded magnetic media or otherwise (collectively, the "Confidential Information"), made available or acquired for the purpose of carrying out this Agreement. Only authorized persons shall use and have access to the Confidential Information, and then only for the period such access is required to perform services under this Agreement. All necessary steps shall be taken by Contractor to safeguard the confidentiality of the Confidential Information in conformance with the terms of this Agreement and any applicable federal and local laws, statutes and regulations.

(a) The obligations under this Section 6 shall survive termination of this Agreement. Upon termination of this Agreement, all Confidential Information shall be returned

promptly to the Legislature and all copies or derivations of the Confidential Information shall be physically and/or electronically destroyed. Contractor shall include a letter attesting to the return of Confidential Information and documenting the destruction of copies and derivations with the returned Confidential Information.

(b) Contractor shall not enter into any agreements or discussions with a third party concerning the Confidential Information without the prior written consent of the Legislature, and then only if Contractor requires the third party to agree to the terms of this Section 6 and the Confidential Information is provided to such third party only for purposes of enabling Contractor to discharge its responsibilities under this Agreement.

(c) The confidentiality obligations set forth in this Section 6 shall not apply (i) to the extent required by applicable law, (ii) to the extent that any Confidential Information is now or hereafter becomes part of the public domain, but only to the limited extent that such Confidential Information, or any portion thereof, is in the public domain not as a result of any breach or violation of this Agreement, or (iii) to the extent that a party is directed otherwise under the terms of a valid and effective order issued by a court of competent jurisdiction.

6.2 Equitable Relief. Contractor (a) acknowledges that any violation of the provisions of this Section 6 may cause to the Legislature immediate and irreparable damage for which the Legislature cannot be adequately compensated by monetary damages, (b) therefore agrees that in the event of any such breach, the Legislature shall be entitled to such preliminary or other injunctive relief, an order for specific performance, and any other equitable relief as a court may determine to be appropriate, (c) hereby waives any requirement that the Legislature post, as a condition or other requirement of obtaining any such equitable relief, a bond or other collateral, and (d) further agrees that such equitable relief shall be in addition to any damages or other remedies provided by law and otherwise available to the Legislature by reason of Contractor's breach.

7. CONFLICTS OF INTERESTS; ETHICS

7.1 Contractor warrants and covenants that it has not violated and will not violate Guam's procurement law or regulations pertaining to ethics in public contracting.

7.2 Notwithstanding any other provision in this Agreement, Contractor acknowledges and agrees that any breach by Contractor of the covenants or warranties in this Section 7 shall be deemed a material breach of this Agreement and shall entitle the Legislature to immediately terminate this Agreement without liability.

8. COMPLIANCE WITH LAWS

8.1 General. Contractor shall comply with all applicable federal and local laws, statutes, regulations and ordinances with respect to this Agreement. Contractor represents and warrants that it is fully licensed to do business in Guam to render the services to be provided herein.

8.2 Non-Discrimination in Employment. Contractor agrees (i) not to unlawfully discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, marital status, national origin, ancestry, or physical or mental handicap, and (ii) to post and to cause any subcontractor to post in a conspicuous place available to employees and applicants for employment, a notice setting forth the substance of clause (i), above.

9. Prohibition Against Gratuities and Kickbacks

A. Gratuities. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee, to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

B. Kickbacks. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement of the award of a subcontract or order.

10. RETENTION AND ACCESS TO RECORDS AND OTHER REVIEW. Contractor, including subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to the services performed and costs incurred, and shall make such materials available at its respective offices at all reasonable times for inspection by the Legislature for the period ending six (6) years following the expiration or termination of this Agreement. The Legislature agrees to comply with Contractor's reasonable requests for access to all documents and Legislature property reasonably necessary to the performance of Contractor's services under this Agreement.

11. INDEMNIFICATION

11.1 Indemnification. Contractor shall indemnify and hold the Legislature and each of its officers, agents, Board members and employees, harmless from and against all claims, losses, expenses, injuries, damages, actions, lawsuits, judgments, and all other liabilities, including reasonable attorneys' fees for the defense thereof, arising from or relating to (i) Contractor's breach or failure to perform any of its obligations under this Agreement, (ii) the inaccuracy of any representation or warranty of Contractor under this Agreement, (iii) any violation of or noncompliance with any federal or local law or regulation by Contractor, or (iv) any act or omission of Contractor or its employees, officers, directors, contractors, agents, representatives, successors, or assigns, in the performance or nonperformance of services under this Agreement.

11.2 No Liability. The Legislature assumes no liability for any accident, loss, claim, judgment, action or injury that may occur with respect to Contractor, Contractor's officers, directors, agents, servants, subcontractors or employees, or to the personal property of any such person or entity, arising out of the performance of services under this Agreement except to the extent caused by the willful misconduct of the Legislature. No Board member, officer, agent, or employee of the Legislature shall be personally liable to Contractor under or by reason of this Agreement or any of its provisions.

12. SUSPENSION OF WORK

12.1 Suspension for Convenience. The Legislature may order Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Legislature may determine to be appropriate for the convenience of the territory.

12.2 Adjustment of Cost. If the performance of all or any part of the work is, for an unreasonable period of time, suspended, delayed, or interrupted by an act of Legislature in the administration of this Agreement, or by the failure of the Legislature to act within the time specified in this Agreement (or if no time is specified, within reasonable time), an adjustment shall be made for any increase in the cost of performance of this Agreement necessarily caused by such unreasonable suspension, delay, or interruption and this Agreement modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent:

(a) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of Contractor; or

(b) such adjustment is provided for or excluded under any other provision of this Agreement.

12.3 Time Restriction on Claim. No claim under this Section 11 shall be allowed:

(a) for any costs incurred more than five (5) days before Contractor shall have notified the Legislature in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

(b) unless the claim is asserted in writing as soon as practicable after the termination of such suspension, delay, or interruption, but not later than the date of final payment under the contract.

12.4 Adjustments of Price. Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 11 shall be determined in accordance with Section 12, below.

13. PRICE ADJUSTMENT

13.1 Price Adjustment Methods. Any adjustment pursuant to the terms of this Agreement in the Compensation payable under this Agreement, shall be made in one or more of the following ways:

(a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

(b) by unit prices specified in this Agreement or subsequently agreed upon;

(c) by the costs attributable to the event or situation covered by the applicable clause or provision, plus appropriate profit or fee, all as specified in this Agreement or subsequently agreed upon;

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

(e) in the absence of an agreement between the parties, by a unilateral determination by the Legislature of costs attributable to the event or situation covered by the clause or provision, plus appropriate profit or fee, all as computed by the Legislature in accordance with generally accepted accounting principles and applicable provisions under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions of Article 5, Chapter 5 of 5 G.C.A. (Legal and Contractual Remedies) of the Guam Procurement Act.

14. DISPUTES

14.1 All controversies between the Legislature and Contractor which arise under, or are by virtue of, this Agreement and which are not resolved by mutual agreement, shall be decided by the Procurement Officer in writing, within 60 days after written request by Contractor for a final decision concerning the controversy; provided, however, that if the Procurement Officer does not issue a written decision, within 60 days after written request for a final decision, or within such longer period as may be agreed upon by the Parties, then Contractor may proceed as if a decision adverse to the Legislature had been received.

14.2 The Procurement Officer shall immediately furnish a copy of the decision to Contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

14.3 Any such decision shall be final and conclusive, unless fraudulent, or Contractor brings an action appealing the decision to the Office of Public Auditor. Either party shall have the right to appeal an adverse decision by the Public Auditor to the Superior Court of Guam as provided in 5 GCA Section 5707.

14.4 Contractor shall comply with any decision of the Procurement Officer and proceed diligently with performance of this Agreement pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Agreement, except where there has been a material breach of the contract by the Legislature; provided, however, that in

any event Contractor shall proceed diligently with the performance of the contract where the Chief Procurement Officer, the Director of Public Works, or the head of a Purchasing Agency has made a written determination that continuation of work under this Agreement is essential to the public health and safety.

15. CLAIMS BASED ON LEGISLATURE ACTIONS OR OMISSIONS

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

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

(i) prior to the commencement of the services involved, if at that time the contractor knows of the occurrence of such action or omission;

(ii) within 30 days after Contractor knows of the occurrence of such action or omission, if Contractor did not have such knowledge prior to the commencement of the services; or

(iii) within such further time as may be allowed by the Legislature in writing.

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

(b) The notice required by Section 13.1(a), above, describes as clearly as practicable at the time the reasons why Contractor believes that additional compensation, damages, or an extension of time may be remedies to which Contractor is entitled; and

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

15.2 Limitations of Clause. Nothing in this Section 13, however, shall excuse Contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of this Agreement.

15.3 Adjustments of Price. Any adjustment in the Compensation payable under this Agreement made pursuant to this Section 13 shall be determined in accordance with Section 12, above.

16. MODIFICATIONS INCLUDING THOSE DUE TO PUBLIC WELFARE, CHANGE IN LAW OR CHANGE IN MARKETING CONDITIONS.

16.1 The Legislature shall have the unilateral power to modify this Agreement at any time subject to the written agreement of Contractor. The Legislature shall have the power to make changes in this Agreement and to impose new rules and regulations on Contractor under this Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare or due to a change in law. The Legislature shall give Contractor notice of any proposed change in this Agreement and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of Contractor. In the event the Legislature materially alters the obligations of Contractor, or the benefits to the Legislature, then this Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of Contractor, then Contractor or the Legislature shall be entitled to an adjustment in the rates and charges established under this Agreement. Contractor shall be entitled to terminate this Agreement rather than accept modified terms. Nothing contained in this Agreement shall require any party to perform any act or function contrary to law. The Legislature and Contractor agree to enter into good faith negotiations regarding modifications to this Agreement, which may be required in order to implement changes in the interest of the public welfare or due to changes in law. When such modifications are made to this Agreement, the Legislature and Contractor shall negotiate in good faith a reasonable and appropriate adjustment for any changes in services or other obligations required of Contractor directly and demonstrably due to any modification in this Agreement under this Section 14.

17. INDEPENDENT CONTRACTOR AND ITS EMPLOYEES

17.1 Status. Contractor acknowledges that in performing services pursuant to this Agreement, Contractor (a) shall be an independent contractor and not an employee of the Legislature, (b) shall not be entitled to participate in any fringe benefit programs established by the Legislature for the benefit of its employees, and (c) shall be solely responsible for paying prior to delinquency, and shall indemnify, defend, and hold the Legislature free and harmless from and against, all income taxes, self-employment taxes, and other taxes (including any interest and penalties with respect thereto) imposed on the fees and compensation paid by the Legislature to Contractor pursuant to this Agreement.

17.2 Limitation on Authority. Contractor (a) shall not be an agent of the Legislature and shall have no authority to bind the Legislature or incur any liabilities in the name of the Legislature, and (b) shall indemnify, defend, and hold the Legislature free and harmless from and against all claims, costs, damages, and expenses arising from or related to a breach by Contractor of the limitation set forth in this Section 15.2.

17.3 Legislature Security Guidelines. In accordance with applicable local and federal rules and regulations, Contractor and its employees or agents must pre-arrange their visits to Legislature property with a minimum of twenty-four (24) hours advance notice.

18. DISCLOSURE. Contractor hereby represents that it has disclosed to the Legislature all matters regarding Contractor which if not disclosed to the Legislature would materially affect the Legislature's decision to enter into this Agreement with Contractor.

19. DISPOSITION OF PROPERTY AND MATERIALS; INTELLECTUAL PROPERTY RIGHTS

19.1 All plans, outlines, briefs, memoranda, studies, reports, analyses and all other work product and materials incidental or otherwise ("Work Product") which are produced by reason of this Agreement shall be and remain the property of the Legislature, regardless of whether Contractor is in possession of such Work Product, and may be used by the Legislature without permission from Contractor and without any additional costs to the Legislature.

19.2 All Work Products, including any and all intellectual property rights in said Work Product, arising out of this Agreement shall be the sole and exclusive property of the Legislature. Contractor explicitly acknowledges that the Legislature possesses exclusive rights to the Work Product arising out of this Agreement. Contractor shall not use or permit others to use in any way or form the Work Product without the express written consent of the Legislature.

20. EMPLOYMENT OF PERSONS CONVICTED OF A SEX OFFENSE.

Contractor warrants that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated, or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted of an offense with the same elements as heretofore defined in any other jurisdiction, or who is listed on the Sex Offender Registry, shall provide services on behalf of the Legislature while on the Legislature or Government of Guam property, with the exception of public highways. If any employee or agent of Contractor is providing services on government or Legislature property and is convicted subsequent to the effective date of this Agreement, then Contractor warrants that it will notify the Legislature of the conviction within twenty-four (24) hours of the conviction, and will immediately remove and prohibit such convicted person from providing services on government or Legislature property. If Contractor is found to be in violation of any of the provisions of this Section 20, then Contractor shall take corrective action within twenty-four (24) hours of the notice from the Legislature, and Contractor shall notify the Legislature when corrective action has been taken. If Contractor fails to take corrective steps within twenty-four (24) hours of the notice from the Legislature, then the Legislature in its sole discretion may suspend the performance of services until corrective action has been taken.

21. MISCELLANEOUS

21.1 Waiver. No waiver by any party of any right on any occasion shall be construed as a bar to or waiver of any right or remedy on any future occasion.

21.2 Severability. If any provision of this Agreement shall be held or deemed by a court of competent jurisdiction to be invalid, inoperative or unenforceable, the remaining provisions herein contained shall nonetheless continue to be valid, operative and enforceable as though the invalid, inoperative or unenforceable provision had not been included in this Agreement.

21.3 Survival of Warranties. All representations, warranties, agreements, covenants and obligations in this Agreement shall be deemed to have been relied upon by the other party, and shall survive the completion of this Agreement and shall not merge in the performance of any obligation by any party hereto.

21.4 Fees and Expenses. Each of the parties shall bear its own expenses in connection with the negotiation and consummation of the transactions contemplated by this Agreement.

21.5 Notices. All invoices, correspondence, notices, requests, demands and other communications hereunder shall be in the English language, in writing. All notices required to be given under this Agreement by either party to the other may be effected by personal delivery, or by mail (registered or certified, postage, prepaid with return receipt requested). Notices delivered personally shall be deemed communicated as of actual receipt. Mailed notices shall be deemed communicated as of the day of receipt or the fifth (5th) day after mailing, which occurs first. Notices shall be addressed and delivered to the parties as follows, provided that each party may change the address by giving the other party written notice in accordance with this Section 19.5:

TO THE LEGISLATURE: PROPERTIES AND FACILITIES MANAGER
Attention: Ken Lape
163 Chalan Santo Papa
Guam Congress Building
Hagatna, Guam 96910

With a copy to the Legislature's Legal Counsel of Record.

TO CONTRACTOR: VICTOR B. GARCIA
Contractor
145 Linda Way
Tamuning, Guam 96913

21.6 Assignment/Subcontractors. It is expressly acknowledged that Contractor is solely responsible for the fulfillment of its duties and obligations under this Agreement, regardless of whether or not Contractor utilizes one or more subcontractors for such purpose. All rights and interest of Contractor under this Agreement (including, but not limited to, Contractor's right to or interest in any part of or all payments under this Agreement) may not be assigned, transferred or subcontracted to any other person, firm, corporation or other entity, whether by agreement, merger, operation of law or otherwise, without the prior, express written consent of the Legislature. In the event of a permissive subcontract or assignment of this Agreement by

Contractor, Contractor agrees that any subcontractors retained by Contractor or assignees shall be subject to all provisions of this Agreement. Contractor agrees that with respect to any agreement entered into by Contractor with a subcontractor to perform any services required hereunder, such agreement shall specifically include the covenants, warranties, prohibitions and requirements set forth in Sections 7, 8, and 9, above.

21.7 Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of the parties hereto and their respective successors, assigns and transferees, except as otherwise provided for under the terms of this Agreement.

21.8 Entire Agreement; Amendments. This Agreement, the IFB, and the Bid (a) represent the entire understanding of the parties regarding the subject matter hereof, and supersede and replace all prior and contemporaneous understandings regarding the subject matter hereof, whether oral or written, and (b) except as otherwise expressly set forth in this Agreement, may not be modified or amended, except by a written instrument executed by the parties after the effective date of this Agreement.

21.9 Conflicting Terms. In the event of a conflict between the provisions of this Agreement, the IFB, and the Bid, the contradiction shall be resolved by giving precedence in the following order: first, to the provisions of this Agreement (as it may be amended from time to time); second, to the provisions of the IFB; and third, to the provisions of the Bid.

21.10 Effect of Headings. The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and should not affect construction or interpretation of any of its provisions.

21.11 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be a single agreement.

21.12 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by and construed in accordance with the laws of Guam. Each party consents to the jurisdiction of the courts of Guam for the purpose of construing or enforcing the rights and obligations created under this Agreement. The exclusive venue for all disputes that arise under this Agreement shall be the Superior Court in and for Guam.

21.13 Computation of Time. Whenever this Agreement provides for a time period of ten (10) days or less, weekends and Government of Guam holidays shall not be included in the computation. When this Agreement provides for a time period exceeding ten (10) days, weekends and Government of Guam holidays shall be included in the computation.

21.14 Remedies. Any dispute arising out of or under this Agreement shall be subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below their respective signatures.


VICTOR B. GARCIA CONTRACTOR:



VICTOR B. GARCIA
President/General Manager

04/14/2025
Date

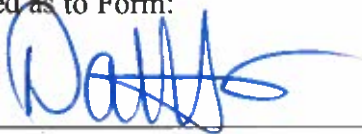
I LIHESLATURAN GUAHAN:



V. Anthony Ada
Authorizing Senator

4/14/25
Date

Approved as to Form:



Darleen Eustaquio Hiton
Legislative Counsel

4/15/25
Date

Certification as to Availability of Funds and as to Expenditure of Funds in Accordance with the Budgetary Requirements of the Standing Rules:



Agnes A. Cruz
Certifying Officer

4/15/25
Date

Executed by:



Frank F. Blas, Jr.
Speaker

4/15/25
Date

Attested by:



Sabrina Salas Matanane
Legislative Secretary

4/15/25
Date

Countersigned by:



V. Anthony Ada
Chairperson, Committee on Rules

4/16/25
Date

FOR USE BY CENTRAL OPERATIONS STAFF OF I LIHESLATURAN GUAHAN:

Allotment Number: 06302-515

Authorized Amount: \$92,000 -

Contract Number: 25380010

**GUAM LEGISLATURE
FISCAL OFFICE**

APR 17 2025

TIME 9:00 AM PM
RECEIVED BY RT