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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

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 FILE NO OPA-PA: 15-009

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

In the Appeal of:)	DOCKET NO. OPA-PA-15-009
)	
KORANDO CORPORATION,)	
)	
Appellant,)	
)	DEPARTMENT OF PUBLIC WORK'S
and)	MOTION FOR SUMMARY JUDGMENT
)	
GUAM DEPARTMENT OF)	
PUBLIC WORKS)	
)	
Purchasing Agency.)	
)	

Come Now, Appellee, by and through the Attorney General of Guam, and move,
 pursuant to Civil Rule 56 for summary judgment dismissing Korando's OPA Appeal.

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ORIGINAL

I. NATURE OF THE CASE

On March 11, 2014, Guam **Department of Public Works** (“**DPW**”) notified **Korando Corporation** (“**Korando**”) of its intent to award contract (“**NOIA**”) for the construction of the **Bile/Pigua Bridge Replacements, Project No. GU-NH-NBIS(007)** (the “**Project**”). The Project was for the replacement of two (2) bridges in the Village of Merizo.

The Project was federally funded by the **Federal Highway Administration** (“**FHWA**”). The FHWA administers the distribution of federal-aid to state, territorial and local government agencies responsible for the construction and reconstruction of highways, bridges, and tunnels. The FHWA provides financial assistance to them in the form of grants funded under the Federal-Aid Highway Program (“**FAHP**”), 23 U.S.C. §§ 101 et seq.

DPW terminated Korando on July 10, 2015, after the corporation failed to diligently pursue work on the Project and had failed to submit written **Change Order Proposals** (“**COP**”) required under the contract.

On September 8, 2015, Korando filed an administrative appeal (“**Korando’s OPA Appeal**”) with the Office of Public Accountability, hereinafter referred to as the OPA, regarding a “decision rendered by the Department of Public Works (“**DPW**”), an agency of the Government of Guam, on July 10, 2015 terminating for cause, Korando’s contract with DPW to construct the Bile/Pigua Bridge Replacement ...”. Among the issues Korando identified to be subject of this appeal were whether but for the delay caused by **Stanley Consultants, Inc.** (“**Stanley**”) DPW’s construction manager on this Project, “Korando’s delay, if any, would not have exceeded one month’s time.”, whether “the original Phasing Plan (the “**Phasing Plan**”) produced by DPW was flawed.”, and whether “DPW’s termination of Korando was pretextual”. See **Korando’s Appeal** at 3.

Korando's appeal seeks a finding that it was wrongfully terminated and that the OPA determine that DPW's termination for breach of contract be determined to be a termination for convenience. *Id.* at 11.

DPW submitted the procurement record and voluminous documents pertaining to the contract and its performance. On October 22, 2015, the OPA Hearing Officer ordered that November 6, 2015 was the deadline for the parties to file any motions. On October 28, 2015 DPW filed a Motion to Disqualify Civile & Tang from these proceedings.

DPW now moves for summary judgment dismissing Korando's Appeal.

II. ISSUES

- A. **Whether DPW is entitled to summary judgment due to Korando's material breach of contract and whether DPW was right to terminate the contract?**
- B. **Whether Stanley's practice of updating and correcting the Project's Submittal Log was proper?**
- C. **Whether DPW acted in good faith in terminating Korando?**

III. DISCUSSION

Applicable summary judgment standard

"The court may grant summary judgment pursuant to Rule 56 of the Guam Rules of Civil Procedure when 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' "*Bank of Guam v. Flores*, 2004 Guam 25 ¶ 8 (citing *Manvil Corp. v. E.C. Gozum & Co.*, 1998 Guam 20 ¶ 6). The party moving for

summary judgment bears the initial responsibility of demonstrating the “absence of a genuine issue of material fact.” Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). The party opposing motions for summary judgment cannot rest upon the mere allegations of his or her pleadings. Instead, the opposing party must set forth specific facts showing that there is a genuine issue of fact for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 256 (1986). In this regard, the party opposing the motion has the burden of presenting “affirmative evidence”. Id. at 257.

Although motions for partial summary judgment are common, Civil Rule 56, which governs summary judgment, does not contain an explicit procedure entitled “partial summary judgment.” The purpose of partial summary judgment “is to isolate and dispose of factually unsupported claims or defenses.” Celotex v. Catrett, 477 U.S. 317, 323-24, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

The Public Auditor through the OPA has the authority to review and determine de novo any matter properly submitted to her. See 5 G.C.A. § 5703. 5 G.C.A. § 5706 specifically states that “[t]he Public auditor shall decide the contract or breach of contract controversy”. This includes review by the Public Auditor of a decision under 5 G.C.A. § 5427. See 5 G.C.A. § 5706(a).

5 G.C.A. § 5427 authorizes DPW’s Director to resolve contract controversies between the Government of Guam and contractor based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission. 5 G.C.A. § 5427(a). Under the statute such a decision is final unless fraudulent or the contractor appeals administratively to the Public Auditor in accordance with 5 G.C.A. § 5706.

A. DPW is entitled to summary judgment as Korando materially breached its contract.

It is DPW’s position that Korando’s default is undisputed by the facts, thus entitling DPW’s Director to terminate the contract. A primary item for Korando’s OPA Appeal is that DPW’s design

was not adequate and that the bridges were not structurally sound to perform the work required of the Contract. This is not accurate. Korando would have the OPA believe that Stanley individually decided that Korando was wrong. This also is not correct. The claim was reviewed by a number of engineers who determined Korando's failed to provide sufficient information, which it was requested to submit and again failed to do so. I apologize for the length of the below exchange of emails however they are necessary to document that DPW and its consultants acted in good faith in evaluating Korando's claim that the Project's plans and specifications were not sufficient to perform the work.

2015: As part of the construction staging, the contractor designs a "Temporary Bridge" over the closed lane portion of the bridges.

From: Kobayashi, Lynden

Sent: Tuesday, June 09, 2015 2:50 PM

To: Marlowe, Jack <marlowejack@stanleygroup.com>

Cc: 'Pecht, Joseph (Joseph.Pecht@parsons.com)' <Joseph.Pecht@parsons.com>;

Wilson, Jeff <WilsonJe@pbworld.com>

Subject: FW: Bile / Pigua Bridge Replacement - Submittal 562.006 Existing Bridge Assessment

Jack,

Please see Mark's comments below in red. In summary, we are recommending that the calculations be revised and resubmitted.

After reviewing the crane specifications, it appears that the crane and case 2 loading configurations proposed would be classified as a permit load. Please request from the contractor the permit for allowance of an overloaded vehicle (crane). If the contractor is planning on running his lowboy over the existing

bridges carrying the counterweight, he needs to get a permit from DPW. DPW does have the right to reject it if it is unsafe for passage.

Regards,

Lynden Kobayashi, P.E.

590 South Marine Corps Drive

Suite 421, Tamuning, GU, 96913

Office: (671) 646-6872 (Direct Ext: 102)

Cell: (671) 988-4225

From: Hirota, Mark

Sent: Tuesday, June 09, 2015 9:40 AM

To: Kobayashi, Lynden

Subject: RE: Bile / Pigua Bridge Replacement - Submittal 562.006 Existing
Bridge Assessment

Lynden,

Sorry for the long winded email

Here is my understanding of the situation:

2004: EFLHD bridge inspectors, inspect the two lane Bile and Pigua bridges and recommend a 5 ton weight limit. Based on this alone, an axle weight in excess of 10,000 lbs should be restricted.

2004-07: Bile and Pigua bridges are reduced to single lane with a jump span over the top of the existing bridge for the single traffic lane. Note; I'm using the term "jump span" to mean that a new bridge superstructure was placed over

the top of the existing bridge to completely carry the live load without the assistance from the existing bridge. This design is referred to as the "Existing Temporary Bridge".

2015: As part of the construction staging, the contractor designs a "Temporary Bridge" over the closed lane portion of the bridges.

2015: Contractor evaluates the Existing Temporary Bridge and determines that it is inadequate to carry the design loading and the crane loading.

Below are my responses to Jack Marlowe's comments:

4. *Is the contractor's attached analysis correct?*

No, the analysis is not correct. As mentioned in my 6/4/15 review of the Temp Steel bridge structural design calculations, the AASHTO design code referenced, uses HL-93 live loading, which is different than Case 1 noted in the calculations. Case 1 also does not include a tandem vehicle plus lane load.

5. *Is the analysis too conservative?*

It is unclear whether the analysis is too conservative. The analysis includes an impact factor, which increases the live load demand by 33%. ***This is not necessary, as the trucks will be crossing a single lane bridge with ramps at each end.***

From the analysis, it is unclear how the live load was distributed to each stringer. A steel plate deck, welded to a W shape is not typical and the design code does not have a live load distribution empirical equation for a superstructure of this type.

From the section properties listed in the stringer design, it is unclear which shape was used for the analysis.

- a. ***Korando has had 6 CY truckloads of concrete already pass over the existing bridges. Historically there may have been concrete trucks fully loaded at 9 CY.***

Without truck scales on the island, it is difficult to draw any conclusions from anecdotal information on truck loading to the Existing Temporary Bridge.

- b. ***It seems that how the contractor moves heavy equipment across the existing bridges is his means and methods.*** It appears that loaded concrete and aggregate trucks have historically used the existing bridges. There is new housing construction between the two bridges. The crane may be the only issue. The contractor could mobilize the crane in sections and assemble it in the area between the bridges. A crawler crane can be separated into carbody, counterweights, crawlers and lattice boom. The carbody is the heaviest section. The carbody for a Manitowoc 11000-1 100T crawler crane weighs about 32,000 pounds. This is about the same as 8 CY of concrete.

See above regarding anecdotal information.

- c. Calculations include a seismic load. Is this necessary for temporary work?
Agree, for a temporary situation, it seems too conservative to consider seismic.

6. *The contractor does not provide any details on the Case 2 crawler crane or mobile crane.* He should state the size of crane required based on the loads from pile driving and placement of precast bridge box beams. Also, I do not understand the loading used for Case 2. Are we looking at the crawler crane or mobile crane?

Calculations discuss a lowboy trailer plus crane, so I'm assuming the loading diagram (page 8 of the calculations) includes the weight of the crane.

7. *If the disassembled crane load is no greater than a concrete truck, or less than the bridge capacity, then the issue is a matter of contractor means and methods.*

Without an accurate analysis of the Existing Temporary Bridge, it is difficult to draw any anecdotal conclusions if the crane would work or not.

Questions/Comments:

- Are plans and calculations available for the Existing Temp Bridge, constructed in the 04-07 timeframe? If so, these plans and calculations should indicate the design live load. *If not, what did the contractor base his calculations of the Existing Temp Bridge on?*

- *As a side note, Temporary Bridge calculations (dated 5/28/15) assert that the temporary bridge is adequate for the live load (design and crane+lowboy). Note; see my previous comments (6/4/15) on the calculations of the temporary bridge.*

Next Step Recommendations

I recommend the following next steps:

- Determine if plans for the Existing Temporary Bridge are available.
- ***Contractor should adjust analysis per AASHTO and existing temp bridge plans and resubmit analysis. Provide backup calculations that show how the live load distribution was determined.***

It would be surprising if the Existing Temporary Bridge was not designed to a high enough capacity to carry legal axle loads. Assuming that the bridge can carry legal axle loads (32kips), contractor means and methods would then dictate that he must break his load down to a sufficient level to carry legal axle loads or:

Seek an overweight permit or

Increase the Existing Temporary Bridge at this own cost.

Regards

Mark E. Hirota, P.E.

Parsons Brinckerhoff

Emphasis added.

This exchange also documents that Stanley did not act independently but instead coordinated with others as needed. Thus, a number of engineers and individuals were involved in analyzing submittals, not just Stanley. At no time did Korando establish that DPW's plans and specifications were incorrect. Korando had the opportunity to provide additional information concerning the bridges capacity but failed to do so.

Nonetheless, while Korando failed to properly establish that the Project bridges are structurally unsound, at least for purposes of completion of the Project, it was entitled under the Contract to choose an alternate means and methods of performing the work. This is what it did when it submitted its October 27, 2014 APP “critical submittal” (“**Korando’s Critical Submittal**”). See **Korando Response** at 12. DPW, whose objective was in completing the Project at the cost and time contracted for, had no objection to Korando choosing a different means and methods to complete the Project and requested that it to submit a COP. At no time did Korando submit a COP for Korando’s Critical Submittal.

Further, once Korando decided to revise the plans and specifications it was solely responsible for the design of the plan. See, *Fru-Con Construction v. United States*, 42 Fed.Cl. 94, 97 (1998) (the court specifically held that the government’s approval of design specifications furnished by a contractor did not relieve the contractor from responsibility for defects).

Korando also failed to obtain the Building Permit in a timely manner. Not until March 5, 2015, nearly a year following DPW’s Notice of Intent to Award the Contract, and two (2) months following DPW issuance of DPW’s January 5, 2015 Notice to Proceed, did Korando obtain the permit. See **Korando’s Response Exhibit 1**, *January 5, 2015 Notice to Proceed* and **Exhibit F**, *Korando’s April 27, 2015 letter*.

Further, Korando’s preliminary plans for the relocation of **Guam Power Authority’s** (“**GPA**”) power lines were incomplete and not stamped by an engineer. Stanley reviewed the submittal and marked it with the notation of “EAN”. See Submittal Log dated April 28, 2015.” See **Korando’s Response**, at 14. Not only didn’t Stanley interfere with Korando’s operations but in

response to the contractor's ongoing failure to coordinate with GPA wrote Mr. Lynden Kobayashi of Parsons Brinkerhoff International Inc. on June 10, 2015 stating:

Can you arrange a meeting between GPA, DPW, PB, PTG, and Stanley Consultants as soon as possible? We need to figure out what is going on and what we can do to expedite the project.

See, Rebuttal **Exhibit J**, Marlowe/Kobayashi Emails.

While it may be useful for the OPA to review all meeting notes those dated June 23, 2015 are indicative of Korando's ongoing problems on the Project. Section 1.2 (Schedule Overview) notes a recurring theme "Little progress has been made since last meeting." Section 1.3 (Potential Delays/Critical Issues) reads as follows:

CM noted that Activity A1450 Fabricate/Install Precast-Prestressed Electrical Concrete Beam (including design) is the controlling work. There are no GPA-approved plans or change order request for this work. **CM said that there may be a possible 60-plus-day delay due to this.**

There are no approved plans for the temporary steel bridge. Korando said they are redesigning the temporary bridge.

Emphasis added.

The June 23, 2015 meeting notes Submittal Log, which tracks when submittals were made and responded to, also serve to refute Korando's claim that Stanley failed to respond to submittals in a timely manner. See, **Exhibit A** 06/23/17 Meeting Notes, 5 of 22 pages.

The takeaway from reviewing these minutes is that as of one hundred and seventy two (172) days (i.e., 38% of the Contract time) into the Project Korando was still making little progress on a week to week basis, had no approved plans which was threatening to delay the Project yet another sixty (60) days and was continuing with redesigning the temporary bridge, a critical item needed for the Project.

Korando materially breached the contract and DPW was correct in terminating its contract.

B. Stanley's correcting and updating of the Submittal Logs is not an uncommon practice of Construction Managers.

DPW believes Korando's assertion that Stanley illegally altered the Submittal Logs to be a red herring, that is it was inserted for the sole purpose of diverting attention from the real issue, that being Korando's failure to diligently pursue work on the Project. Mike Lanning, **Parsons Transportation Group's** ("PTG"), Guam Program Manager, whose responsibilities extend to the general oversight and monitoring of all FHWA funded projects for DPW, has worked on or overseen seventy-five (75) road and transportation projects over thirty-one (31) years of practice as a licensed professional engineer. Mr. Lanning states that while correcting and updating the Submittal Log due a change in status or review may not be a regular practice "it is neither uncommon". See, **Exhibit B Michael Lanning's Declaration**. PTG's Mr. Lanning states that there are any number of reasons for revising and updating a submittal from a subsequent review by another reviewer at a later time, additional information that was discovered which was not available at the time the submittal was originally reviewed, or subsequent reviews by third parties who may not accept or take exceptions to some particular item of a submittal. *Id.*

Mr. Lanning's experience and position is also consistent with PTG's Joe Pecht, who serves in the role of program management support for DPW on various project, including the Project. Mr.

Pecht states that as part of his Project duties he attended weekly review meetings with Stanley and Korando's representatives. During the weekly meetings Mr. Pesch notes that not only was the Submittal Log reviewed, but also the Request for Information Log, Invoice Tracking, Table of Contract Reports and other documents were discussed. See, **Exhibit C** *Joe Pecht Declaration*.

PTG's Mr. Pecht documents that not only did Korando and PTG have actual notice of Stanley's correcting and updating of Submittal Logs, which no one objected to, but that he found such to be "useful as the Submittal Log shows the current status of the construction project without having to re-review a number of documents."

In closing, as substantiated by PTG's Lanning and Pecht, while correcting and updating the Submittal Log due a change in status or review may not be a regular practice "it is neither uncommon". Thus, the OPA should disregard Korando's red herring argument that changes to the Submittal Log are not proper.

C. DPW's Director acted in good faith in terminating Korando.

As discussed in Section B of DPW's Rebuttal there is a presumption that government official's act in good faith and subject only to an "*extremely difficult*" showing can Korando establish otherwise. The record however clearly documents that DPW's Director acted in good faith in terminating Korando. The reasons for terminating Korando included, but were not limited to, the following:

- Korando's failure to perform the work contracted for.
- Korando's failure to "carefully and thoroughly" inspect the bridges and site of the proposed work prior to submitting its proposal.
- Korando taking close to a year to obtain a building permit.
- Korando's failure or refusal to submit COP's for critical submittals (e.g., alternate phasing plan, proposal to place GPA lines underground, etc.) as required under the parties contract.
- Korando's apparent failure to obtain a quote for the crane portion of the work prior to submitting its proposal.

- Korando's failure to provide backup calculations and/or respond to inquiries concerning the project bridges.
- Korando's failure to hire an Archeologist in a timely manner.
- Korando's failure to submit a revised traffic control plan and other required submittals in a timely manner.
- Korando's failure to have an engineer stamp on the (incomplete) alternate plans for GPA's power lines.
- Korando's refusal to cooperate with DPW's construction manager who made independent efforts to *expedite the project*.
- Korando's failure to properly coordinate with GPA.
- Korando's failure to make any significant progress on a week to week basis.
- Korando's failure to submit a temporary shoring plan for the bridge in a timely manner.
- Korando failure to have the temporary steel bridges in place by June 26, 2015 per its April 27, 2015 Recovery Schedule.
- Korando having only completed 1% of the permanent work as of termination.

The above items, which could go on and on, clearly establish that Korando materially breached the contract. DPW and its consultants, Parsons Transportation Group and Stanley Consultants, Inc., acted in good faith and attempted to do what they could to expedite the project. This is not a case where either party alleges that the contract was invalid. Here Korando breached its agreement to diligently perform the work and DPW's Director, after exhausting his other options, was forced to terminate Korando.

Korando's OPA Appeal is without merit and should be dismissed.

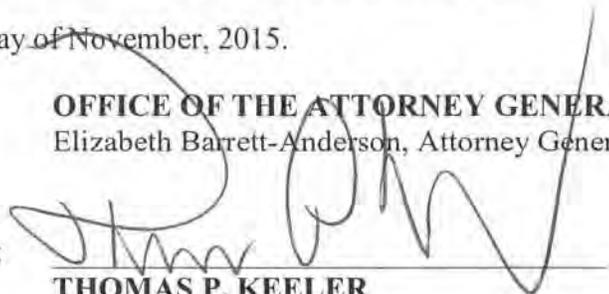
CONCLUSION

DPW is entitled to summary judgment dismissing Korando's OPA Appeal.

Respectfully submitted this 6th day of November, 2015.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



THOMAS P. KEELER
Assistant Attorney General

EXHIBIT A



MEETING NOTES:

1 SCHEDULE

1.1 Summary

Notice to Proceed:	January 5, 2015
Time for Completion:	450 Calendar Days
Contract Completion Date:	March 29, 2016
Current Scheduled Contract Completion Date:	
Delay:	0
Elapsed Time:	163 Days / 36.2%
Percent Complete:	3.79% (Per Invoice #1)

	<u>ACTION REQUIRED</u>
<p>1.2 Schedule Overview</p> <ul style="list-style-type: none"> • Korando 4-week look ahead (attached) • Little progress has been made since last meeting. • Precast yard is about 75% complete. Korando has revised the casting bed plan by shortening and widening. They are finished installing rebar for the casting bed and plan to pour concrete Thursday. • Second pile casting is scheduled for this afternoon. • Electrical work at pedestal is the only permanent work this week (starting Wednesday). 	
<p>1.3 Potential Delays/Critical Issues</p> <ul style="list-style-type: none"> • CM noted that Activity A1450 Fabricate/Install Precast-Prestressed Electrical Concrete Beam (including design) is the controlling work. There are no GPA-approved plans or change order request for this work. CM said that there may be a possible 60-plus-day delay due to this. • There are no approved plans for the temporary steel bridge. Korando said they are redesigning the temporary bridge. 	

	<u>ACTION REQUIRED</u>
<p>2 COST STATUS</p> <ul style="list-style-type: none"> • Cost Status Log (attached) • CM has resubmitted Invoice 1 to DPW following approval of March schedule update. 	
<p>3 CHANGE ORDERS</p> <ul style="list-style-type: none"> • Change Order Log (attached) • PCO No. 3 – Korando sent a cost proposal. CM to review. • PCO No. 4 – Waiting for proposal from Korando. 	
<p>4 SUBMITTALS</p> <ul style="list-style-type: none"> • Submittal Log (attached) • Korando needs to submit a revised casting plan. The piles being cast do not match the approved casting plan. • CM reminded Korando of the following pending submittals: <ul style="list-style-type: none"> ○ Construction Phasing Plan ○ Electrical Plan/ Design/ Change Order ○ Temporary Steel Bridge Plan ○ Temporary sheeting ○ Pile cap rebar schedule ○ Sewer protection plan ○ Water and electrical materials ○ Existing condition survey ○ Apprentice Progress • CM asked Korando to copy CM on submittals sent to utilities and also copy CM on utility coordination. 	



Bile/Pigua
 Project No. GU-NH-NBIS(007)
 Contractor: Korando Corporation
 Client: Department of Public Works

SUBMITTAL LOG
 6/23/2015

Submittal No.	Pay Item No.	Date	Description	Response Date	Total Days	Action	Resubmit	Days Out	Reviewer		
							Yes/No		Name	Date to reviewer	Date from reviewer
103.001-01		10/7/2014	Submittal Register (Originally submitted as 002a.00)	11/3/2014	26	EAN	No	0	R. Senecal	10/7/2014	11/3/2014
104.001-01		10/20/2014	Existing Survey Data (Originally submitted as 004a.00)	2/10/2015	110	REVR	Yes	63	H. Bonsembiante	10/20/2014	2/9/2015
104.001-02		4/13/2015	Existing Survey Data (Originally submitted as 152.001 As-built Survey Data and Drawings)	4/22/2015	9	REVR	Yes	50	J. Marlowe	4/13/2015	4/21/2015
104.001-03		6/12/2015	Existing Survey Data (Originally submitted as 152.001 As-built Survey Data and Drawings)						H. Bonsembiante	6/23/2015	
105.001-01		12/31/2014	Buy America Requirements	1/15/2015	15	REJR	Yes	158	H. Bonsembiante	12/31/2014	1/13/2015
107.001-01		10/30/2014	Building Permit (Originally submitted as 108.001-01)	11/17/2014	17	NAR	No	0	R. Senecal	10/30/2014	11/17/2014
107.002-01		11/25/2014	Environmental Protection and Erosion Control Plan	1/9/2015	44	REVR	Yes	0	J. Marlowe	11/25/2014	1/8/2015
107.002-02		2/5/2015	Environmental Protection and Erosion Control Plan	2/27/2015	22	NET	No	0	J. Marlowe	2/5/2015	2/26/2015
107.003-01		12/22/2014	Water Quality Monitoring Plan (WQMP)	1/5/2015	13	REVR	Yes	0	J. Marlowe	12/22/2014	1/8/2015
107.003-02		2/18/2015	Water Quality Monitoring Plan (WQMP) (Originally submitted as 107.003)	2/27/2015	9	NET	No	0	J. Marlowe	2/18/2015	2/26/2015
107.004-01		12/22/2014	Accident Prevention Plan (APP)	1/9/2015	17	REVR	Yes	0	H. Bonsembiante	12/22/2014	12/29/2014
107.004-02		2/20/2015	Accident Prevention Plan (APP)	2/27/2015	7	NET	No	0	J. Marlowe	2/20/2015	2/26/2015
107.005-01		1/7/2015	Encroachment Permit (Originally submitted as 108.001-01 Notice to Permit and Encroachment Permits)	1/8/2015	1	NAR	No	0	J. Marlowe	1/7/2015	1/8/2015
107.006-01		2/11/2015	Archaeological Research Design (Staging Area) Draft	2/18/2015	7	NAR	Yes	66	J. Marlowe	2/11/2015	2/17/2015
107.006-02		4/24/2015	Archaeological Research Design (Staging Area) Draft	4/28/2015	4	NAR	Yes	55	J. Marlowe	4/24/2015	4/27/2015
107.006-03		5/29/2015	Archaeological Research Design (Staging Area) Final	6/3/2015	4	NAR	Yes	20	J. Marlowe	5/29/2015	6/2/2015
107.007-01		2/18/2015	Hazard Analysis Critical Control Points (HACCP) Plan (Originally submitted 107.005)	3/5/2015	17	NET	No	0	J. Marlowe	2/18/2015	3/4/2015
107.008-01		3/30/2015	DOA And GWA Merizo Site Coordination Meeting Narratives	4/17/2015	17	NAR	No	0	R. Senecal	3/30/2015	4/15/2015
107.009-01		6/1/2015	Staging Area Building Permit	6/3/2015	2	NAR	No	0	J. Marlowe	6/1/2015	6/2/2015
107.010-01		6/4/2015	Final Technical Report for Archaeological Assessment (DPR Approval Letter)	6/8/2015	4	NAR	No	0	J. Marlowe	6/4/2015	6/8/2015
107.011-01		6/15/2015	Environmental Pre-construction Survey (Originally submitted within NCR 007 Correction Documentation)	6/17/2015	2	NET	No	0	C. Richards	6/15/2015	6/17/2015
108.001-01		1/7/2015	Notice to Proceed (NTP) (Originally submitted as 108.001-01 Notice to Permit and Encroachment Permits)	1/8/2015	1	NAR	No	0	J. Marlowe	1/7/2015	1/8/2015
108.002-01		1/26/2015	Korando-BBR Subcontract Agreement (Originally submitted as 103.002)	2/6/2015	10	REJR	Yes	82	C. Richards	1/26/2015	2/6/2015
108.002-02		4/28/2015	Korando-BBR Subcontract Agreement (Originally submitted as 103.002)	5/4/2015	55	EAN	No	0	C. Richards	4/28/2015	5/4/2015
108.003-01		3/30/2015	Department of Labor (DOL) H-2B Alien Labor Certification (Originally submitted as 108.002)	4/28/2015	28	REVR	Yes	55	C. Richards	3/30/2015	4/27/2015

108 003-02		4/30/2015	Department of Labor (DOL) H-2B Alien Labor Certification (Originally submitted as 108.002)	6/1/2015	31	NET	No	0	C Richards	4/30/2015	6/1/2015
108 004-01		6/4/2015	SF1444 Request for Authorization of Additional Classification Rate (Originally submitted as 108 006-01)						PTG/DOL	6/6/2015	
108 005-01		6/2/2015	List of Subcontractors and Suppliers (Originally submitted as 108 007)	6/9/2015	7	EAN	No	0	C Richards	6/2/2015	6/8/2015
108 006-01		6/11/2015	Pineda Surveying (Certificate of Authorization) (Originally submitted as 108.008)	6/15/2015	4	NET	No	0	C Richards	6/11/2015	6/15/2015
109 001-01		11/11/2014	Schedule of Values	1/8/2015	57	REJR	Yes	0	H Bonsembiante	11/11/2014	12/23/2014
109 001-02		1/20/2015	Schedule of Values	2/4/2015	14	NAR	No	0	H Bonsembiante	1/20/2015	2/4/2015
153 001-01		12/3/2014	Quality Control Plan	1/9/2015	36	EAN	No	0	H Bonsembiante	12/3/2014	1/9/2015
153 002-01		2/18/2015	Rocky Mountain Precast Quality System Manual	3/5/2015	17	NET	No	0	J Marlowe	2/18/2015	3/5/2015
155 001-01	15501-0000	10/10/2014	Construction Preliminary Network Analysis Schedule (NAS) (Originally submitted as 003a.00)	10/14/2014	4	NSR	No	0	R. Senecal	10/10/2014	10/14/2014
155 001-02	15501-0000	10/14/2014	Construction Preliminary Network Analysis Schedule (NAS) (Originally submitted as 003a.00)	10/29/2014	15	NSR	No	0	R. Senecal	10/14/2014	10/29/2014
155 001-03	15501-0000	10/29/2014	Construction Preliminary Network Analysis Schedule (NAS)	10/30/2014	1	NSR	No	0	R. Senecal	10/29/2014	10/30/2014
155 001-04	15501-0000	10/30/2014	Construction Preliminary Network Analysis Schedule (NAS)	11/3/2014	3	REJR	Yes	0	R. Senecal	10/30/14	11/3/2014
155 001-05	15501-0000	11/11/2014	Construction Preliminary Network Analysis Schedule (NAS)	1/15/2015	64	NSR	No	0	R. Senecal	11/11/2014	1/12/2015
155 001-06	15501-0000	1/12/2015	Construction Preliminary Network Analysis Schedule (NAS)	1/20/2015	8	EAN	No	0	H Bonsembiante	1/12/2015	1/16/2015
155 001-07	15501-0000	2/10/2015	Construction Preliminary Network Analysis Schedule (NAS)						SUBMITTAL VOIDED		
155 001-08	15501-0000	2/24/2015	Construction Preliminary Network Analysis Schedule (NAS)						SUBMITTAL VOIDED		
155 002-01	15501-0000	3/2/2015	Progress Schedule as of January 31, 2015	3/9/2015	7	EAN	No	0	R. Senecal	3/2/2015	3/9/2015
155 003-01	15501-0000	3/9/2015	Revised Baseline Network Analysis Schedule (NAS)						SUBMITTAL VOIDED		
155 003-01	15501-0000	3/10/2015	Progress Schedule as of February 28, 2015	3/17/2015	7	EAN	No	0	R. Senecal	3/10/2015	3/13/2015
155 004-01	15501-0000	3/17/2015	Baseline Network Analysis Schedule (NAS) (Revised as of March 17, 2015)	3/25/2015	8	NSR	No	0	R. Senecal	3/17/2015	3/20/2015
155 005-01	15501-0000	4/16/2015	Recovery Network Analysis Schedule (NAS) and Progress as of March 31, 2015	4/29/2015	13	REVR	Yes	13	J. Marlowe	4/16/2015	4/29/2015
155 005-02	15501-0000	5/12/2015	Recovery Network Analysis Schedule (NAS) and Progress as of March 31, 2015 (Originally submitted as 155 007 Recovery Schedule)	6/1/2015	19	EAN	No	0	R. Senecal	5/12/2015	5/28/2015
157 001-01	15701-0000	12/22/2014	Stormwater Pollution Protection Plan (SWPPP)	1/9/2015	22	EAN	No	0	J Marlowe	12/22/2014	1/8/2015
157 002-01	15701-0000	5/11/2015	Soil Erosion Control, Silt and Orange Fence	5/20/2015	9	REVR	Yes	33	C Richards	5/11/2015	5/13/2015
203 001-01		2/5/2015	Disposal Plan	2/27/2015	39	NET	No	0	J Marlowe	2/5/2015	2/26/2015
300 001-01		6/4/2015	Aggregate Course	6/8/2015	4	REVR	No	0	C Richards	6/4/2015	6/5/2015
402 001-01		2/2/2015	Job-Mix Formula (Grading B) for Shoulder Temporary Access	3/11/2015	39	EAN	No	0	J Marlowe	2/2/2015	3/10/2015
402 002-01		2/2/2015	HMA Concrete Pavement, Friction Course (Originally submitted 402.002 Tack Coat and HMA Concrete Asphalt)	3/11/2015	39	EAN	No	0	J Marlowe	2/2/2015	3/11/2015
412 001-01	41202-0000	2/2/2015	Tack Coat (Originally submitted 402.002 Tack Coat and HMA Concrete Asphalt)	3/11/2015	18	NET	No	0	J Marlowe	2/2/2015	3/11/2015

EXHIBIT B

Declaration of Michael Lanning

DECLARATION OF MICHAEL LANNING OF PARSONS TRANSPORTATION GROUP IN SUPPORT OF DPW'S MOTION TO DISQUALIFY THE LAW FIRM OF CIVILLE & TANG IN REPRESENTING KORANDO CORPORATION IN OPA-PA-15-009

MICHAEL LANNING makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed by Parsons Transportation Group ("PTG"), an Illinois corporation, authorized to conduct business on Guam, with offices for the practice of professional engineering and construction management services are located at the ITC Building, 590 South Marine Corps Drive, Suite 403, Tamuning, Guam, 96913. I have been a licensed professional engineer for thirty-one (31) years and have worked on or overseen approximately seventy-five (75) road and transportation projects. I am a duly licensed engineer and a member in good standing with the Guam Professional Engineers Architects and Land Surveyors Board.

2. I submit this Declaration to disclose what appear to be conflicts of interest arising out of Civille & Tang, PLLC's ("Civille & Tang") concurrent representation of PTG in the Route 4 Personal Injury lawsuit, known as *Pangelinan v. Government of Guam, Department of Public Works, et al.*, Guam Superior Court, Civil Case No. CV 0419-14 (referred to herein as the "Route 4 lawsuit"), and other legal matters, the exact nature of which I am not familiar with, and Civille & Tang's subsequent filing of an appeal before Guam's Office of Public Accountability on behalf of Korando Corporation ("Korando's OPA Appeal") concerning a separate FHWA funded project, the Bile/Pigua Bridge Reconstruction Project (the "Bile/Pigua Project"), Appeal No. OPA-PA-15-009.

3. In early 2008, PTG was added to the Guam Transportation Group ("GTG"), which was formed in 2007, to provide policy direction and overall guidance to the goals and objectives of the department's 2030 Guam Transportation Program. PTG, whose contract was renewed in May 2013, is tasked with compliance management assistance, augmenting the forward planning and execution effort by DPW, in addition to providing advice, guidance and services to the DPW.

4. PTG has one client on Guam, that being the Department of Public Works ("DPW"). To perform its services on behalf of DPW's Highway Division. PTG has eleven (11) full time employees, with another two (2) employees of a sub-consultant to PTG assigned to its office. The goal and responsibility of these thirteen (13) individuals is to assist DPW, primarily on the planning, design, construction and repair of Guam's routed roads that are funded by the FHWA.

5. My responsibilities as the Guam Program Manager of PTG include, but are not limited to, the general oversight and monitoring of all FHWA funded projects by meeting and communicating with DPW's Director Glenn Leon Guerrero, its Deputy Director, Vicente C. Benavente, DPW's Acting Highway Administrator, Joaquin Blaz, as well as Assistant Attorney General Thomas P. Keeler, who I understand is assigned to the department's Highways Division by the Office of the Attorney General for Guam. I communicate and meet with DPW's Director, Deputy Director and Highways Acting Administrator, as well as other DPW staff members throughout the work day and week. Further, it is standard business for the Director and DPW

Management to meet with and consult with me before making any major decisions on Guam's FHWA funded roadway projects.

6. I am advised that Civile & Tang has represented PTG or other business units of Parsons Corporation of which PTG is also a business unit for quite some time; however, I am not familiar with the nature of these projects. In October of 2014 PTG referred a new matter to Civile & Tang, namely the Route 4 lawsuit, a FHWA funded highway project.

7. Of critical importance in the Route 4 lawsuit is DPW's then Director's decision, supported by the GTG, that pavement work be suspended due to concerns about the quality of the asphalt mixture. PTG, as a member of the GTG, made recommendations regarding the pavement work that is an issue in the Route 4 lawsuit.

8. Similar to the Route 4 Project, GTG, along with me and other PTG staff members monitored Korando's progress, or lack thereof, on the Bile/Pigua Project, in particular following DPW's January 5, 2015 Notice to Proceed ("NTP"). Concerns with Korando's ongoing lack of progress began to be of major concern when in an early March 2015 GTG weekly meeting DPW's Director expressed concerns that there was no activity on the Bile/Pigua Project. Over the next three (3) to four (4) months PTG, and other members of the GTG, continued to monitor Korando's lack of progress, and for the reasons explained in DPW's filings in OPA-PA-15-009, was significantly involved in leading up to and recommending the Director's decision to issue Korando a formal Notice to Cure ("NTC"), and then a Notice to Terminate ("NTT"). To further evidence PTG's direct involvement with DPW's day to day operations it reviewed and prepared the final draft of the NTC and NTT, as well as the earlier letter to the Route 4 Project contractor suspending pavement work.

9. I was surprised when I was discovered that Civile & Tang had filed Korando's OPA Appeal, as I felt PTG and my involvement and recommendations that DPW suspend pavement work on the Route 4 Project, currently at issue in the Route 4 lawsuit, were substantially similar to the process employed by PTG and DPW's Director in terminating Korando. I reviewed the conflict issue with PTG's stateside in-house counsel.

10. My concern with Civile & Tang's conflict of interest was reinforced when AAG Keeler informed me that Ms. Tang was hoping to coordinate with him on scheduling my deposition. I informed him that I viewed PTG and DPW interests, at least with regards to FHWA funded projects and the Highway Division, the same and that I considered it highly unusual and possibly unethical for PTG's law firm, Civile & Tang, to depose me to gather information to use against the department in Korando's OPA Appeal. Ms. Tang next wrote me directly via a September 17, 2015 email requesting a meeting the following day. Attached as Exhibit "A" and incorporated herein by reference, is a copy of her email. Again I considered this highly unusual and possibly unethical and did not respond other than to forward a copy of Ms. Tang's email to AAG Keeler.

11. Another item that I believe evidences an actual conflict with Civile & Tang's representation of PTG and subsequent filing of Korando's OPA Appeal concerns Ms. Tang's FOIA requests and her failure, notwithstanding being advised of such, to fully understand that

along with its numerous other responsibilities to DPW, PTG also maintains its FHWA records. As such PTG is responsible for preparing the copies needed for the Director to formally respond to FOIA requests. Of particular concern is Ms. Tang's October 5, 2015 Sunshine Act Request ("4th FOIA Request") that in general requires that DPW produce all material documents on all FHWA funded projects since 2010, which I estimate to be in excess of over sixty (60) projects. Based on my involvement with Guam's FHWA highway projects, I am aware of only one of these projects that can be viewed as reasonably related to Korando's OPA Appeal. I have advised DPW of such. To the extent this FOIA request is a burden on DPW and its operations, it is also a burden on PTG and its operations.

12. I informed DPW that through October 9, 2005, compliance with Ms. Tang's FOIA requests had cost just under Five Thousand Dollars (\$5,000). The real concern however is that in order to respond to Ms. Tang's 4th FOIA Request it is estimated to cost an additional Thirty Two Thousand Five Hundred and Fifty Dollars (\$32,550). Just as important is the fact that at times I have been forced to assign up to five (5) different staff members to work on the various FOIA replies. For the 4th FOIA Request PTG has decided to devote two (2) full time staff members working for an estimated one-thousand (1000) labor hours or sixty three (63) working days. I am aware that Ms. Tang is on notice that a) DPW has notified her that the 4th FOIA Request is overly burdensome, b) the materials requested are not reasonably related to Korando's OPA Appeal, and c) that in addition to adversely impacting DPW's activities it is also causing disruptions with PTG's day-to-day operations, Civile & Tang's other client.

13. DPW informs me that it intends on calling me and possibly other PTG staff to testify at the OPA Hearing. Being examined by PTG's law firm Civile & Tang, in the context of the Korando OPA Appeal appears to create a genuine and unavoidable conflict of interest.

I declare under penalty of perjury that the aforementioned is true.

Dated: October 28, 2015.


Michael Lanning

EXHIBIT C

Declaration of Joe Pecht

“Declaration subject to off island counsel’s review and approval. Will be filed early next week.”