

Office of the Attorney General
Elizabeth Barrett-Anderson
 Attorney General of Guam
 Solicitor Division
 590 S. Marine Corps Drive
 Tamuning, Guam 96913 • USA
 (671) 475-3324 • (671) 472-2493 (Fax)
 www.guamag.org

Attorneys for the Government of Guam

RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS

DATE: 08/03/2016

TIME: 3:10 AM PM BY: AQ

FILE NO OPA-PA: 16-007

**THE OFFICE OF PUBLIC ACCOUNTABILITY
 HAGÁTÑA, GUAM**

In the Appeal of:

CORE TECH INTERNATIONAL CORP.,

Appellant,

and

**GUAM DEPARTMENT OF
 PUBLIC WORKS,**

Purchasing Agency.

) DOCKET NO. **OPA-PA-16-007**

) **PURCHASING AGENCY**
) **SUPPLEMENTAL TO**
) **PROCUREMENT RECORD**

Comes now, the Purchasing Agency, by and through its Counsel of Record, Shannon Taitano, Assistant Attorney General, hereby submits the Supplemental to the Department of Public Works Procurement Record.

Dated this 3rd day of August, 2016.

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

By:

SHANNON TAITANO
 Assistant Attorney General

ORIGINAL

TABLE OF CONTENTS

1. Draft IDIQ Agreement dated April 14, 2016
2. Draft IDIQ Agreement dated April 28, 2016
3. Declaration of Reynaldo T. Juno dated August 1, 2016

TAB 1

Draft IDIQ Agreement dated April 14, 2016

THIS CONTRACTUAL AGREEMENT is made and entered into this _____ day of _____, 2016, by and between the **Department of Public Works, Government of Guam**, (hereinafter referred to as the "**Government**") and **Guam Educational Facilities Foundation, Inc.** (hereafter referred to as the "**Developer**").

Formatted: Left: 1", Right: 1", Different first page

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

RECITALS

WHEREAS, the Government desires to engage the Developer to provide professional services to the Government on the "Project" as solicited in the Request for Proposal Project No. 730-5-1055-L-YIG "RFP" in accordance with the RFP, its Scope of Work, the Developer's submitted Proposal, and the other Contract Documents, all of which are incorporated herein by this reference; and

WHEREAS, the services to be rendered are of a special nature which has been determined to be in the best interest of the public and are to be performed under this Agreement by professional personnel other than the employees in the classified services of the Government; and

WHEREAS, the Developer has submitted a proposal and an interest in providing such services; and

WHEREAS, the award of this Agreement to the Developer has been made pursuant to a finding by the Evaluation Committee that the Developer is qualified based on the evaluation factors set forth in the RFP, that negotiations of compensation have been determined to be fair and reasonable, and provide delivery of the best value for Guam in meeting the objectives of Guam Department of Education and the Government of Guam; and

WHEREAS, the Government, after engaging in a competitive selection procurement process in accordance with the Guam Procurement Laws (Title 5, Guam Code Annotated, Chapter 5) and Regulations (Title 2, Guam Administrative Rules and Regulations, Division 4), is prepared to award this contract to Developer as the most qualified, responsive, responsible offeror;

NOW, THEREFORE, in consideration of the foregoing recitals and of the mutual terms, covenants, conditions set forth below, the parties **AGREE** as follows:

I.

SCOPE OF CONTRACT

1.1 IDIQ Agreement. This is an Indefinite Delivery Indefinite Quantity (IDIQ) Agreement for the financing, design, demolition, renovation, rehabilitation, construction and maintenance of Guam Department of Education school facilities, with priority of Simon Sanchez High School, and development of a comprehensive capital improvement plan.

Formatted: No underline

the time, or date indicated in each Task Order, in which time or date may extend beyond the term of the Contract.

2.3 The Government makes no guarantee whatsoever as to the minimum amount of services that will be required under this Contract and no fee adjustment will be made if the amount of the services requested is less than anticipated. The Government reserves the right to add to or delete any item from this proposal or resulting Contracts which deemed to be in the best interest of the Government of Guam.

III.

COMPENSATION AND PAYMENT FOR SERVICES

3.1 **Compensation and Payment for Services.** The Government will compensate the Developer for services rendered for Task Orders issued pursuant to Section I (Scope of Contract). All Task Orders shall be issued as follows:

Formatted: Font: Bold, Underline
Formatted: Font: Bold

A. First Task Order. The first Task Order will be for Simon Sanchez High School. The Task Order shall include a Project Development Agreement, which shall be completed within seven hundred and thirty (730) calendar days from issuance of said Task Order.

Formatted: Font: Bold
Formatted: Indent: Left: 0.5"
Formatted: Font: Bold, Underline
Formatted: Underline

B. Second Task Order. The second Task Order will be to complete the Comprehensive Capital Improvement Plan. The Task Order shall be completed within three hundred and sixty five (365) calendar days from issuance of said Task Order.

Formatted: Font: Not Bold
Formatted: No underline
Formatted: Font: Not Bold
Formatted: Font: Not Bold

C. Fixed fee. All Task Orders shall be fixed fee.

Formatted: Font: Not Bold
Formatted: Font: Not Bold

D. Government to Issue Task Order. The Government will furnish the Developer a Task Order specifying the services to be performed.

Formatted: Underline
Formatted: Font: Bold, Underline
Formatted: Font: Bold

E. RSMeans. The pricing and costs for all Task Orders will be developed using RS Means Facilities Construction Cost Data based on the most recent information, city cost indexes, location factors, unit prices, coefficient percentage factor and other factors of data as contained in the RS Means Facilities Construction Cost Data. GEFF's coefficient attributed to each offering period is 1.3450%.

Formatted: No underline

(i) Deviation from RSMeans. (To be discussed).

Formatted: Indent: Left: 1"

F. Separate Funding. Each Task Order will be funded and encumbered separately. Each Task Order issued under or pursuant to this Agreement shall be expressly made subject to the terms of this Agreement and shall incorporate the terms and conditions of this Agreement by reference. If there is conflict between

Formatted: No underline
Deleted: and the fees to be paid for each Task Order.

COORDINATION OF THE WORK

4.1 Program Administrator. The Superintendent of GDOE ("Program Administrator") or designee appointed in writing shall be responsible for providing instructions to GEFf for all or a specified portion of this Contract and each Task Order. In the event GEFf effects any change at the direction of any person other than the Program Administrator, the change is considered to be made without authority and no adjustment will be made in the Task Order price to accommodate any increase as a result thereof.

Formatted: Font: Bold, No underline
Formatted: Font: Bold, No underline

4.2 GEFf Single Point of Contact. GEFf shall designate in writing a single point of contact on Guam to act as a liason with the Program Administrator. Such point of contact may be changed in GEFf's discretion.

Formatted: Font: Bold, No underline

VI.

CHANGES IN SCOPE OF WORK AND SERVICES

6.1 Change Orders. By written order, at any time, and without notice to surety, the Government may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

Deleted: 5
Formatted: Underline

(A) Drawings, designs, or specifications, if the supplies to be furnished are to be specifically manufactured for the Territory in accordance therewith;

(B) Method of shipping or packing; or

(C) Place of delivery.

6.2 Adjustments of Price or Time for Performance. If any such change order increases or decreases the Developer's cost of, or the time required for performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the contract amended in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Guam Procurement Law and the Guam Procurement Regulations.

Deleted: 5
Formatted: Underline

Failure of the parties to agree to an adjustment shall not excuse the Developer from proceeding with the contract as changed, provided that the Territory promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Developer shall not be deemed to have prejudged any claim for additional compensation, or an extension of time for completion.

6.3 Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph 6.1 ("Change Orders") of this clause, unless such period is extended by the Government in writing, the Developer shall file notice of intent to assert a claim

Deleted: 5
Formatted: Underline
Deleted: 5

VIII.

INSURANCE

8.1. At its sole cost and expense, the Contractor shall place and maintain with responsible insurance carriers who cover the region of Guam and scope of this contract, any insurance as required by the Government, and in form and with insurers acceptable to the Government.

All policies, with the exception of Workers Compensation Insurance and Professional Liability Insurance, shall be endorsed to include the Developer and the Government, and their respective officers, directors, agents and employees as additional insured.

8.2. Insurance Requirements. The Developer shall obtain and keep in force throughout the term of this Contract such policies of insurance with the limits and provisions as follows:

Formatted: Underline

- (A) Workers Compensation in accordance with the statutory requirements of Guam;
- (B) Employer's Liability Insurance in the amount of _____;
- (C) Commercial General Liability in a broad form and in an amount not less than _____ aggregate and per occurrence. This policy will provide coverage for personal and bodily injury, including death, for property damage, and include endorsements for contractual liability;
- (D) Automobile Liability Insurance with limits not less than _____ for bodily injury and property damage applicable to owned, rented, leased, or borrowed automobiles while in the custody of the insured or anyone driving such vehicles with insured's permission; and
- (E) Professional Liability Insurance including errors and omissions in an amount not less than _____ per claim and in the aggregate.

IX.

INDEPENDENT CONTRACTOR

In the performance of this Contract, it is expressly understood that the Developer's status is that of an independent Developer and not as an agent, partner, joint venturer or employee of the Government. The Developer's conduct shall be in accordance with that status. If the Developer is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

transact business in Guam and listed in the U.S. Department of the Treasury's Listing of Approved Sureties (Circular 570).

XI

EPRESENTATIONS

Deleted: R

The Developer has not knowingly influenced, and will not knowingly influence a government employee to breach any of the ethical standards set forth in Chapter 11 of the Guam Procurement Regulations;

The Developer has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in § 11107 of the Guam Procurement Regulations; and

The Developer is not aware of any current engagement or relationship with any public or private party that could potentially create a conflict of interest with the Government of Guam or any of its agencies or instrumentalities. The Government reserves the right to terminate or modify this Contract in the event any conflict or potential conflict arises or is discovered.

XII.

SOVEREIGN IMMUNITY

Nothing in this Contract shall be construed to waive, or to act as a waiver of, the sovereign immunity of the Government of Guam or the applicability of the Guam Government Claims Act.

XIII.

MISCELLANEOUS PROVISIONS

13.1. Venue and Governing Law. The Developer hereby specifically consents and agrees to the jurisdiction and forum of the Superior Court of Guam with respect to any and all claims or disputes which may arise hereunder, and expressly waives any and all rights it may otherwise have had to contest the same or to proceed in a different jurisdiction or forum. At all times, this Contract shall be governed by and construed in accordance with the laws of Guam.

Deleted: 2
Formatted: Underline

12.2 Compliance with Laws. The Developer shall comply with all applicable Federal, state and local laws, statutes and ordinances, and with all legal and applicable rules, regulations or orders of any governmental department, board, bureau or agency having jurisdiction over the subject of this Contract.

Formatted: Underline
Deleted:

12.3. Interest of Members of the Department and Others. No officer, member, or employees of the Government who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall participate in any decision

Formatted: Underline

Auditor must be made within sixty days of the Government's decision or from the date the decision should have been made.

The Developer shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The Developer shall comply with the Government's decision 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 the Developer claims a material breach of this Agreement by the Government. However, if the Government determines in writing that continuation of services under this Agreement is essential to the public's health or safety, then the Developer shall proceed diligently with performance of the Agreement notwithstanding any claim of material breach by the Government.

12.7. Contract Binding Upon Parties, Successors. It is agreed that this Contract and all of the Covenants hereof shall inure to the benefit of, and be binding upon, the Government and the Developer respectively and the Developer's partners, successors, assigns and legal representatives. Neither the Government, nor the Developer, shall have the right to assign, transfer, or sublet the Developer's interest or obligations hereunder without written consent of the other party.

Formatted: Underline

12.8. Liens. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material supplier or other person can or will contract for or in any other manner have or acquire any lien upon the works covered by this Contract.

Formatted: Underline

12.9. Non-Gratuity. The Developer further agrees to execute and file a Non-Gratuity Affidavit before final payment under the Contract is made by the Government.

Formatted: Underline

12.10. Notices, Correspondence and Payments. All notices, correspondence, and payments required to be sent to either party hereunder shall be sent to the parties at the address stated below, either by mail or delivered personally or by facsimile and confirmed by letter. Service of any notice or demand by mail shall be by registered letter, receipt requested, and shall be deemed effective ten (10) days after mailing or on the date actually received, whichever is first.

Formatted: Underline

For the Government: Department of Public Works
542 North Marine Drive
Tamuning, Guam 96913
Attention: Glenn Leon Guerrero, Director
Telephone: (671) 646-3131 / 646-3217 / 646-3117
Facsimile: (671) 646-3169

Deleted: .

- Is required to be released by applicable law or court order.

Each party shall return all Proprietary Information relating to this Agreement to the disclosing party upon request of the disclosing party or upon termination of this Agreement, whichever occurs first. However, each party shall have the right to retain a copy of the Proprietary Information for its internal records and subject to ongoing compliance with the restrictions set forth in this Agreement. This section shall survive termination of this Agreement.

12.14. Access to Records & Audit Review. The Developer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its corporate offices or headquarters at all reasonable times during the term of this Agreement and for three years from the date of final payment under this Agreement, for inspection by the Government.

Formatted: Font: Times New Roman, 12 pt, Underline, (Asian) Japanese

12.15. Deliverables. Upon payment in full for the Services, and unless otherwise agreed, Deliverables shall be the property of the Government. The Developer shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of the Government. The Government shall be solely responsible for any disclosure of the Deliverables, which may be required by law. Where applicable laws require immediate disclosure by the Developer, the Developer shall make its best efforts to give prior notice to the Government. At the Government's request and expense, the Developer will assist the Government in making such disclosures as may be required by law.

Formatted: Font: Times New Roman, 12 pt, Underline, (Asian) Japanese

Notwithstanding the foregoing provisions of this Clause, the Government acknowledges that in the course of its performance under the Agreement the Developer may use product materials and methodologies proprietary to the Developer, and the Government agrees that it shall have or obtain no rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement (if any) executed by the parties. The Developer makes no representation that Deliverables are suitable for reuse on any other project and any such reuse shall be at the sole risk of the Government.

12.16. Defective Work. Any errors or omissions caused by the negligence of the Developer with respect to its scope of services that may be discovered before the completion of any phase or within such time as required by the Task Order shall be fixed by the Developer to conform to the spirit and intent of the specifications and the Task Order. The fact that the Government may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

Formatted: Underline

12.17 Wage Determination. The Developer is required to be in compliance with the Wage Determination (5 G.C.A. § 5801 and § 5802).

Formatted: Underline

12.20 Effective Date. The effective date of this Contract shall be the date of the Governor of Guam's signature on this Contract.

Formatted: Font: Underline

IN WITNESS WHEREOF, the parties hereto have executed this Contract on the day and year first above-written.

GUAM DEPARTMENT OF EDUCATION OR
DEPARTMENT OF PUBLIC WORKS,
GOVERNMENT OF GUAM

GUAM EDUCATIONAL FACILITIES
FOUNDATION, INC.

By: _____
Date: _____

By: _____
Date: _____

**APPROVED AS TO LEGALITY AND
FORM:**

OFFICE OF THE ATTORNEY GENERAL OF
GUAM

By: _____
Date: _____

APPROVED:

GOVERNOR OF GUAM

EDDIE BAZA CALVO

TAB 2

Draft IDIQ Agreement dated April 28, 2016

GEFF Comments/edits – April 21, 2016
GovGuam/edits – April 26, 2016
Draft as of April 28, 2016

THIS CONTRACTUAL AGREEMENT (“Contract”) is made and entered into by and between the **Department of Public Works and the Guam Department of Education, Government of Guam**, (hereinafter collectively referred to as the “**Government**”) and **Guam Educational Facilities Foundation, Inc.** (hereafter referred to as the “**Developer**”).

RECITALS

WHEREAS, the Government desires to engage the Developer to provide professional services to the Government for the financing, design, demolition, renovation, rehabilitation, construction, equipping, and the providing of maintenance and insurance for a total of thirty-six (36) Guam Department of Education schools, with priority of Simon Sanchez High School, as well as the development of a comprehensive capital improvement plan (“CCIP”) that takes into consideration the physical condition of each school along with attendance, area population, enrollment patterns and bussing logistics (the “Project”) as solicited in the Request for Proposal Project No. 730-5-1055-L-YIG (“RFP”) in accordance with the RFP, its Scope of Work, the Developer's submitted Proposal, and the other Contract Documents, all of which are incorporated herein by this reference; and

WHEREAS, the services to be rendered are of a special nature which has been determined to be in the best interest of the public and are to be performed under this Contract by professional personnel other than the employees in the classified services of the Government; and

WHEREAS, the Developer has submitted a proposal and an interest in providing such services; and

WHEREAS, the award of this Contract to the Developer has been made pursuant to a finding by the Evaluation Committee that the Developer is qualified based on the evaluation factors set forth in the RFP, that negotiations of compensation have been determined to be fair and reasonable, and provide delivery of the best value for Guam in meeting the objectives of Guam Department of Education and the Government of Guam; and

WHEREAS, the Government, after engaging in a competitive selection procurement process in accordance with the Guam Procurement Law (Title 5, Guam Code Annotated, Chapter 5) and Regulations (Title 2, Guam Administrative Rules and Regulations, Division 4), is prepared to award this contract to Developer as the most qualified, responsive, responsible offeror.

NOW THEREFORE, in consideration of the foregoing recitals and of the mutual terms, covenants, conditions set forth below, the parties AGREE as follows:

2.1. Term of Contract. The term of this Contract is for a period of **five (5) years** unless extended by mutual agreement. The parties agree that time is of the essence in the performance of the obligations under this Contract, and, therefore, the Developer agrees to commence work under this Contract beginning at the issuance of the NTP.

2.2. Task Order Period of Performance. Issuance of Task Orders, approved in writing by the DPW Director **and** the Superintendent of Education, shall be made within the term of the Contract as set forth in 2.1. The Developer shall complete such Task Order, within the time or date indicated in each Task Order, which time or date may extend beyond the term of the Contract.

2.3. No Minimum Services Guaranteed. The Government makes no guarantee whatsoever as to the minimum amount of services that will be required under this Contract and no fee adjustment will be made if the amount of the services requested is less than anticipated. The Government reserves the right to add to or delete any item from this Contract, which is deemed to be in the best interest of the Government of Guam.

III.

COMPENSATION AND PAYMENT FOR SERVICES

3.1. Compensation and Payment for Services. The Government will compensate the Developer for services rendered for Task Orders issued as provided in this Contract based on available funds and not to exceed One Hundred Million and 00/100 Dollars (\$100,000,000.00) pursuant to Section I (Scope of Contract), unless otherwise directed by the Government in writing and permitted by Public Laws 32-120 and 32-121 or any other law.

A. First Task Order. The first Task Order will be for Simon Sanchez High School. The Task Order, which shall include a Project Development Agreement, shall be completed within seven hundred and thirty (730) calendar days from financial closing, but in no event later than March 31, 2017. Financial closing shall mean the date on which financing in an amount sufficient to fund one hundred percent of the First Task Order is first made available and deposited into the Project Fund Escrow Account defined in Article IV (the "Financial Closing"). Such financing may include the issuance of tax-exempt obligations authorized under Public Laws 32-120 and 32-121 or other alternative financing approved by I Liheslaturan Guahan.

B. Second Task Order. The second Task Order will be to complete the CCIP. The Task Order shall be completed within three hundred and sixty five (365) calendar days commencing from the date of award of the negotiated Task Order.

C. Fixed Fee. All Task Orders shall be fixed fee and will be funded from financing arranged by the Developer pursuant to Section IV.

of the work accomplished to date and a draw to cover monthly progress payments. The monthly construction report shall also discuss any problems the Developer has encountered since the previous report, any problems it foresees, and a correction action plan for minimizing the effect of the problem(s) encountered. Changes in personnel shall also be documented in the report. In addition, representatives of the Government may attend weekly meetings between the Developer and subcontractors to receive updated information on the construction progress since the date of the last monthly report.

3.3. Task Order Acceptance and Final Payment. Final payment shall be made upon satisfactory delivery and acceptance of all services as herein specified and performed under each Task Order and this Contract. Prior to final payment and as a condition precedent thereto, the Developer shall execute and deliver to the Government a notarized release in a form approved by the Government, of claims against the Government arising under and by virtue of this Contract.

IV.

FINANCING

Unless mutually agreed to in writing otherwise, funding to pay Task Orders issued pursuant to this Contract will be made available by the Developer through one or more lease-lease back agreements (“Lease Agreements”) as outlined in Public Law 32-120 and Public Law 32-121. Such Lease Agreements shall be secured by the revenue authorized in PL 32-120 and PL 32-121 and the rental payments payable from the revenue sources outlined in these two public laws. The Lease Agreements shall include a “Non-Appropriation” clause providing that the Government shall not be obligated to make lease rental payments thereunder in the event sufficient funds are not appropriated prior to the beginning of any Renewal Term or otherwise not legally available for such purpose. Financing raised in the capital markets or from other sources will be held in escrow with a trustee bank (“Project Fund Escrow Account”), acceptable to the Government. Financing proceeds held in the Project Fund Escrow Account will be disbursed monthly to pay Tasks Order progress payments to the Developer upon the execution of an authorized payment requisition form approved by a designated representative of the Government. A completed payment requisition form submitted to the Government shall be deemed approved within five (5) business days of the Government’s receipt of the completed payment requisition unless the Government objects to specific aspects of the payment requisition.

Upon the execution of this Contract the Government and Developer hereby agree to commence work expeditiously and diligently on entering into a Lease Agreement and other related financing documents to facilitate the financing of the First Task Order as outlined in section 3.1 (A).

V.

“CONTRACT DOCUMENTS” DEFINED

7.2. Adjustments of Price or Time for Performance. If any such change order increases or decreases the Developer's cost of, or the time required for performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the contract amended in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Guam Procurement Law and the Guam Procurement Regulations and PL 32-120 and PL 32-121.

Failure of the parties to agree to an adjustment shall not excuse the Developer from proceeding with the contract as changed, provided that the Government promptly and duly instructs the Project Fund Trustee to make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Developer shall not be deemed to have prejudged any claim for additional compensation, or an extension of time for completion.

7.3. Time Period for Claim. Within thirty (30) days after receipt of a written change order under Paragraph 6.1 ("Change Orders") of this clause, unless such period is extended by the Government in writing, the Developer shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Developer's claim unless the Government is prejudiced by the delay in notification.

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

7.5. Other Claims not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the Developer's right to pursue a claim arising under the contract. If pursued in accordance with the clause in the Guam Procurement Regulations entitled, "Claims Based on a Procurement Officer's Actions or Omissions, Notice of Claim Clause, or for Breach of Contract."

VIII.

TERMINATION OF AGREEMENT

8.1. Termination by the Government. Nothing herein shall be construed to waive the rights of the Government of Guam to stop work or otherwise terminate this Contract as provided for, and in accordance with, Guam law. If the Government terminates this Contract for convenience, then it shall be responsible for the payment of any preparatory work, engineering, material ordered and labor expended up to the date of termination. The Government shall give written notice of the termination to the Developer specifying the part of the contract terminated and when terminated becomes effective. Any termination of this Contract by the Government shall not terminate any executed Task Orders and related agreements not in default.

IX.

while in the custody of the insured or anyone driving such vehicles with insured's permission;
and

E. Professional Liability Insurance including errors and omissions in an amount not less than \$1,000,000 per claim and 10% of the project costs in the aggregate.

XI.

INDEPENDENT CONTRACTOR

In the performance of this Contract, it is expressly understood that the Developer's status is that of an independent contractor and not as an agent, partner, joint venture or employee of the Government. The Developer's conduct shall be in accordance with that status. If the Developer is comprised of more than one legal entity, each such entity shall be jointly and severally liable hereunder.

The Developer does not have, nor does it hold itself out as having, any right, power or authority to create any contract or obligation, either express or implied, on behalf of, in the name of, or binding upon the Government, or to pledge the Government's credit, or to extend credit in the Government's name. In addition, nothing contained in this Contract shall be deemed or construed by the parties hereto, or by any third party, to create the relationship of principal and agent, or a partnership or a joint venture, or of any association between the Government and the Developer.

The Developer is liable for document errors and damages (added costs) to the Government of Guam as a result of negligent performance as discussed below:

A. Liability for Document Errors. The Developer is liable for correcting errors or omissions for all data provided with respect to field inspection and observation, quality assurance monitoring, coordination and reporting, or other services furnished by the firm. Corrections are at no cost to the Government of Guam. This liability is not absolved by the Government of Guam review, approvals, acceptance of work, or payment of work by the end of project.

B. Liability for Damages. When the Government of Guam incurs additional costs that result from deficiencies as specified in subparagraph XI. A. (Liability for Document Errors), negligence, such as Contract modifications, the extent of the Developer liability is determined by the judgment of the Government of Guam (with the advice of technical personnel and legal counsel). The extent of liability is valued against four conditions:

i. The construction management modifications must be attributed to all and/or any data or omission, negligence;

ii. The data error or omission must stem from an act or omission, negligence by the Developer;

The Developer has not violated, is not violating, and will not violate the prohibition against gratuities and kickbacks set forth in § 11107 of the Guam Procurement Regulations; and

The Developer is not aware of any current engagement or relationship with any public or private party that could potentially create a conflict of interest with the Government of Guam or any of its agencies or instrumentalities. The Government reserves the right to terminate or modify this Contract in the event any conflict or potential conflict arises or is discovered.

XVI.

SOVEREIGN IMMUNITY

Nothing in this Contract shall be construed to waive, or to act as a waiver of, the sovereign immunity of the Government of Guam or the applicability of the Guam Government Claims Act.

XVII.

MISCELLANEOUS PROVISIONS

17.1. Venue and Governing Law. The Developer hereby specifically consents and agrees to the jurisdiction and forum of the Superior Court of Guam with respect to any and all claims or disputes which may arise hereunder, and expressly waives any and all rights it may otherwise have had to contest the same or to proceed in a different jurisdiction or forum. At all times, this Contract shall be governed by and construed in accordance with the laws of Guam.

17.2. Compliance with Laws. The Developer shall comply with all applicable Federal, state and local laws, statutes and ordinances, and with all legal and applicable rules, regulations or orders of any governmental department, board, bureau or agency having jurisdiction over the subject of this Contract.

17.3. Interest of Members of the Department and Others. No officer, member, or employees of the Government who exercise any functions or responsibilities in the review or approval of the undertaking or carrying out of this Contract, shall participate in any decision relating to this Contract which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in the Contract or the proceeds thereof.

17.4. Covenant Against Contingent Fees. The Developer warrants that it has not employed any person to solicit or secure this Contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warranty shall give the Government the right to terminate the Contract or, as consideration, deduct the amount of such commission, percentage brokerage or contingent fee from the Contract price. This warranty shall not apply to commission's payable by Developer upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Developer for the purpose of securing business.

17.7 Contract Binding Upon Parties, Successors. It is agreed that this Contract and all of the Covenants hereof shall inure to the benefit of, and be binding upon, the Government and the Developer respectively and the Developer's partners, successors, assigns and legal representatives. Neither the Government, nor the Developer, shall have the right to assign, transfer, or sublet the Developer's interest or obligations hereunder without written consent of the other party.

17.8. Liens. It is hereby mutually agreed by and between the parties hereto that no mechanic, contractor, subcontractor, material supplier or other person can or will contract for or in any other manner have or acquire any lien upon the works covered by this Contract.

17.9. Non-Gratuity. The Developer further agrees to execute and file a Non-Gratuity Affidavit before final payment under the Contract is made by the Government.

17.10. Notices, Correspondence and Payments. All notices, correspondence, and payments required to be sent to either party hereunder shall be sent to the parties at the address stated below, either by mail or delivered personally or by facsimile and confirmed by letter. Service of any notice or demand by mail shall be by registered letter, receipt requested, and shall be deemed effective ten (10) days after mailing or on the date actually received, whichever is first.

For the Government: Department of Public Works
542 North Marine Drive
Tamuning, Guam 96913
Attention: Glenn Leon Guerrero, Director
Telephone: (671) 646-3131 / 646-3217 / 646-3117
Facsimile: (671) 646-3169

Guam Department of Education
P.O. Box DE
Hagatna, Guam 96932
Attention: Jon Fernandez, Superintendent
Telephone: (671) 475-0462
Facsimile: (671) 472-5003

For the Developer: Guam Education Financing Foundation
c/o Mr. Richard B. Inman, Jr.
3060 Peachtree Road, Suite 1700
Atlanta Georgia 30305
Telephone: (404) 504-2772
Facsimile: (404) 504-2790

Each party may change its designated address by serving notice, in writing, on the other party as provided above.

17.14. Access to Records & Audit Review. The Developer shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its corporate offices or headquarters at all reasonable times during the term of this Contract and for three years from the date of final payment under this Contract, for inspection by the Government.

17.15. Deliverables. Upon payment in full of all rental payments due pursuant to the Lease Agreement(s), and unless otherwise agreed, Deliverables shall be the property of the Government. The Developer shall not disclose the Deliverables relating to the Services to a third party without the prior written authorization of the Government. The Government shall be solely responsible for any disclosure of the Deliverables, which may be required by law. Where applicable laws require immediate disclosure by the Developer, the Developer shall make its best efforts to give prior notice to the Government. At the Government's request and expense, the Developer will assist the Government in making such disclosures as may be required by law.

Notwithstanding the foregoing provisions of this Clause, the Government acknowledges that in the course of its performance under the Contract the Developer may use product materials and methodologies proprietary to the Developer, and the Government agrees that it shall have or obtain no rights in such proprietary products, materials and methodologies except pursuant to a separate written agreement (if any) executed by the parties. The Developer makes no representation that Deliverables are suitable for reuse on any other project and any such reuse shall be at the sole risk of the Government.

17.16. Defective Work. Any errors or omissions caused by the negligence of the Developer with respect to its scope of services that may be discovered before the completion of any phase or within such time as required by the Task Order shall be fixed by the Developer to conform to the spirit and intent of the specifications and the Task Order. The fact that the Government may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

17.17 Wage Determination. The Developer is required to be in compliance with the Wage Determination (5 G.C.A. § 5801 and § 5802).

17.21. Force Majeure. Developer shall not be in default by reason of any failure in performance of this Contract or Task Order in accordance with its terms, including any failure by Developer to make progress in the prosecution of the performance under a Task Order, if the delay or the failure is due to causes out of the reasonable control of Developer, including, but not limited to acts of God; acts of public enemy; acts of DPW, GDOE or any other governmental body; governmental legislation, acts, orders, or regulation; fires; earthquake, floods, typhoons, or other natural catastrophes; unexpected or unsuitable soils conditions or discovery of hazardous materials on site; epidemics; quarantine restrictions; boycotts, strikes or other labor disputes; embargoes; shortages of labor materials; disruption in the financial markets; or severe weather.

17.22. Counterparts. This Contract may be executed in counterparts, each of which shall be binding as of the date first written above, and all of which shall constitute one and the same instrument. Each such counterpart shall be deemed an original, and it shall not be necessary in making proof of this Contract to produce or account for more than one such counterpart.

(Remainder of page left intentionally blank)

TAB 3

Declaration of Reynaldo T. Juno dated August 1, 2016



Office of the Attorney General
Elizabeth Barrett-Anderson
 Attorney General of Guam
Solicitor Division
 590 S. Marine Corps Drive
 ITC Bldg., Ste. 706
 Tamuning, Guam 96913 • USA
 Tel. (671) 475-3324 Fax. (671) 472-2493
 www.guamag.org

Attorneys for the Government of Guam

**IN THE OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEAL**

IN THE APPEAL OF:)	DOCKET NO. OPA-PA-16-007
)	
)	
CORE TECH INTERNATIONAL CORP.,)	DECLARATION
)	
Appellant.)	
)	

REYNALDO T. JUNIO makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed by Guam Department of Public Works (“DPW”), Government of Guam, in its Capital Improvement Projects (“CIP”) division as an Engineer II.

2. Along with CIP’s John Calanayan I was tasked with assisting on RFP No. 730-5-1055-L-YIG Lease Financing for Design, Renovation, Rehabilitation, Construction and Maintenance for Public Schools (Beginning with Simon Sanchez High School) that is the subject of this Appeal.

3. That I recorded a portion of one of the Negotiating Committee's May meetings with the Selected Contractor. I am not able to recall the date of the meeting.

4. I did not notify anyone at the meeting that I was recording it.

5. The recording was made on my cell phone and in order to maintain the meeting minutes. I intended to save the recording at a later date.

6. That at the end of the meeting Assistant Attorney General Thomas Keeler informed me that the cell phone recording was part of the procurement record.

7. That on or about June 4th or 5th, 2016 my cell phone was damaged by water. I was not able to use it or access my records.

6. That I took the cell phone to Docomo's main office in Tamuning to repair but was informed that it was severely damaged. After 3 days Docomo informed me that it would be more expensive to repair that to replace the cell phone.

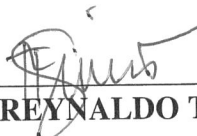
7. Once I was told the cell was no good I threw it away in the trash at my house.

8. Sometime in the 2nd half of June, when I was on leave, CIP's John Calanayan telephoned me advising that the recording was needed as part of the procurement record. I informed him that I was not able to provide the recorded meeting referenced in Section 3 as the cell phone was severely damaged and no longer in my possession.

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

Submitted this 1 day of August, 2016.

By:


REYNALDO T. JUNIO