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RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

DATE: Nov 28, 2017

TIME: 3:29 AM PM BY: FDJ

FILE NO OPA-PA: 17-10

Attorneys for Appellant Core Tech International Corp.

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF) Docket No. OPA PA-17-10
)
CORE TECH INTERNATIONAL CORP.,) **APPELLANT CORE TECH**
) **INTERNATIONAL CORP.'S**
Appellant.) **REQUEST FOR ISSUANCE OF**
) **SUBPOENAS DUCES TECUM**
)
)
_____)

Pursuant to 2 GAR, Div. 4, §§ 12108 and 12109, Appellant Core Tech International Corp. ("CTI") requests that the Office of the Public Auditor issue Subpoenas Duces Tecum to the entities as stated in the attached proposed Subpoenas Duces Tecum, attached hereto as Exhibits A and B.

Appellee Department of Works asserts a reliance on advice of counsel defense in response to CTI's claim of retaliation. Specifically, DPW asserts:

The timing of DPW August 23, 2017 Notice of Termination/Default was based on the advice of counsel who informed DPW that the Route 1/8 Project's Surety's Bond might not be enforceable if DPW failed to terminate prior to the one year anniversary of Substantial Completion (i.e., August 25, 2016). DPW's counsel provided this advice as early as June, 2017.

Appellant's Exhibit A, attached to Motion to Disqualify. CTI filed a Motion to Disqualify DPW's counsel Thomas Keeler on November 27, 2017 due to DPW's advice of counsel defense. (CTI's Motion to Disqualify is incorporated by reference herein in its entirety).

CTI requires the Subpoenas Duces Tecum in order to obtain communications between, on the one hand, Mr. Keeler, DPW and any other lawyers representing DPW, and on the other hand, the surety and its legal counsel, Blair Sterling Johnson & Martinez which may tend to prove or disprove the reliance on advice of counsel defense. The documents and information are required in order for CTI to file its Hearing Brief, currently due on December 7, 2017, and to prepare for the hearing of this matter beginning on December 13, 2017.

For all of the foregoing reasons, CTI respectfully requests that the Office of the Public Auditor issue the two Subpoenas Duces Tecum in the forms attached hereto as Exhibits A and B.

Dated this 28th day of November, 2017.

ARRIOLA, COWAN & ARRIOLA
Counsel for Core Tech International Corp.

By: 
ANITA P. ARRIOLA

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF)
) Docket No. OPA PA-17-10
)
) **SUBPOENA TO PRODUCE**
CORE TECH INTERNATIONAL CORP.,) **DOCUMENTS, INFORMATION OR**
) **OBJECTS**
)
)
Appellant.)
_____)

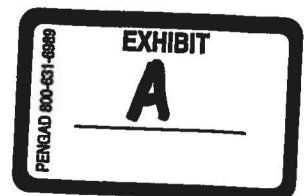
TO: **BLAIR STERLING JOHNSON & MARTINEZ**
238 Archbishop F.C. Flores Street
Suite 1008 DNA Building
Hagatna, Guam 96910-5205

X **Production: YOU ARE COMMANDED** to produce at the time, date and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material. **SEE EXHIBIT A, ATTACHED HERETO.**

Place: ARRIOLA, COWAN & ARRIOLA 259 Martyr St., Suite 201, Hagatna, Guam 96910, Telephone: (671) 477-9730/33, Fax: (671) 477- 9734, Email: acalaw@arriolacowan.com .	Date and Time: Monday, December 4, 2017 at 9:00 a.m.
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The following provisions of Guam Rules of Civil Procedure Rule 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(d) and (g) relating to your duty to respond to the subpoena and the potential consequences of not doing so.

Office of the Public Auditor



The name, address, email address, and telephone number of the attorney representing CORE TECH INTERNATIONAL CORP., who issues or requests this subpoena, are: ANITA P. ARRIOLA, Arriola, Cowan & Arriola, 259 Martyr St., Suite 201, Hagatna, Guam 96910, Telephone: (671) 477-9730/33, Fax: (671) 477-9734, Email: acalaw@arriolacowan.com.

PROOF OF SERVICE

I received this subpoena on (date) _____.
(Name) _____.

__ I served the subpoena by delivering a copy to the named person as follows:
_____ on
(date) _____; or

__ I returned the subpoena unexecuted because: _____;
_____;

I tendered to the witness the fees for one day's attendance, and the mileage allowed by law in the amount of \$ _____.

I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Guam Rules of Civil Procedure, Rule 45(a)(1)(D)

Rule 45. Subpoena.

(a) Form: Issuance.

(1) Every subpoena shall:

(D) set forth the text of subdivisions (c) and (d) of this rule.

(c) Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated books papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or

(iii) requires disclosure of privileged and other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specific conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial-preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information is produced in response to a subpoena that is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The person who produced the information must preserve the information until the claim is resolved.

EXHIBIT A

Definitions

“Bond” means the Performance and Payment Bond No. 9060033 for the Route 1/Route 8 Intersection Improvements and Agana Bridges Replacement Project No. GU-NH-0001(014) and Project No. GU-DAR-0001(014).

“DPW” means the Department of Public Works, Government of Guam, its employees, representatives, agents, attorneys, and consultants.

"Documents" includes, but is not limited to, handwriting, typewriting, printing, photostating, photographing, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any written, recorded, or graphic matter however produced or reproduced, including, but not limited to, documents stored in or retrievable by computer, memoranda, reports, studies, analyses, contracts, agreements, checks, charts, graphs, indices, data sheets, computer disks, data processing cards or tapes, notes, post-its, work papers, entries, letters, telegrams, teletypes (including facsimiles), internal memoranda, advertisements, brochures, circulars, catalogs, tapes, records, bulletins, papers, books, pamphlets, accounts, calendars, diaries, electronic mail (or "e-mail"), text messages, and instant messaging. The term "document" or "documents" shall also include any carbon or photographic or any other copies, reproductions, or facsimiles of any original, and shall mean the original and any copy or reproduction or facsimile that is in any way different from the original.

“FHWA” means Federal Highway Administration, its employees, representatives, agents, attorneys, and consultants.

“Mr. Keeler” means Thomas Keeler, Assistant Attorney General, his employees, representatives, agents, co-counsel, and attorneys working with or under him.

“PTG” means Parsons Transportation Group, Inc., its employees, representatives, agents, attorneys, and consultants.

“You” or “your” means Blair Sterling Johnson & Martinez, its partners, members, employees, representatives, agents, attorneys, and consultants.

Documents to be Produced

1. All documents relating to, referring to, or comprising communications between you and Mr. Keeler concerning the Bond.
2. All documents relating to, referring to, or comprising communications between you and FHWA concerning the Bond.
3. All documents relating to, referring to, or comprising communications between you and PTG concerning the Bond.
4. All documents relating to, referring to, or comprising communications between you and DPW concerning the Bond.
5. All documents relating to, referring to, or comprising communications between you and any lawyers representing DPW concerning the Bond.
6. All documents relating to, referring to, or comprising communications between DPW and Takagi & Associates, Inc. concerning the Bond.
7. All documents relating to, referring to, or comprising communications between DPW and Fidelity and Deposit Company of Maryland concerning the Bond.
8. All documents relating to, referring to, or comprising communications between DPW and Zurich American Insurance Company concerning the Bond.

**BEFORE THE PUBLIC AUDITOR
PROCUREMENT APPEALS
TERRITORY OF GUAM**

IN THE APPEAL OF)
)
)
CORE TECH INTERNATIONAL CORP.,)
)
)
)
Appellant.)
)

Docket No. OPA PA-17-10

**SUBPOENA TO PRODUCE
DOCUMENTS, INFORMATION OR
OBJECTS**

TO: TAKAGI & ASSOCIATES, INC.
Suite 200 Flame Tree Plaza
540 Pale San Vitores Road
Tumon, Guam

X *Production*: **YOU ARE COMMANDED** to produce at the time, date and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material. **SEE EXHIBIT A, ATTACHED HERETO.**

Place: ARRIOLA, COWAN & ARRIOLA 259 Martyr St., Suite 201, Hagatna, Guam 96910, Telephone: (671) 477-9730/33, Fax: (671) 477- 9734, Email: acalaw@arriolacowan.com .	Date and Time: Monday, December 4, 2017 at 9:00 a.m.
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Office of the Public Auditor



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PROOF OF SERVICE

I received this subpoena on (date) _____.
(Name) _____.

__ I served the subpoena by delivering a copy to the named person as follows:
_____ on
(date) _____; or

__ I returned the subpoena unexecuted because: _____;
_____;

I tendered to the witness the fees for one day's attendance, and the mileage allowed by law in the amount of \$ _____.

I declare under penalty of perjury under the laws of Guam that the foregoing is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Guam Rules of Civil Procedure, Rule 45(a)(1)(D)

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(a) Form: Issuance.

- (1) Every subpoena shall:
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(2)(A) A person commanded to produce and permit inspection and copying of designated books papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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- (i) fails to allow reasonable time for compliance
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or
- (iii) requires disclosure of privileged and other protected matter and no exception or waiver applies, or
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(B) If a subpoena

- (i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specific conditions.

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"Mr. Keeler" means Thomas Keeler, Assistant Attorney General, his employees, representatives, agents, co-counsel, and attorneys working with or under him.

"PTG" means Parsons Transportation Group, Inc., its employees, representatives, agents, attorneys, and consultants.

"You" or "your" means Takagi & Associates, Inc., its partners, associates, members, employees, agents, attorneys, and consultants.

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5. All documents relating to, referring to, or comprising communications between you and any lawyers representing DPW concerning the Bond.
6. All documents relating to, referring to, or comprising communications between DPW and Fidelity and Deposit Company of Maryland concerning the Bond.
7. All documents relating to, referring to, or comprising communications between DPW and Zurich American Insurance Company concerning the Bond.