



FAX

To: **Rebecca J. Wrighton, Esq.**
Legal Counsel, Appellee –GCC

Mr. Bill R. Mann, Esq.
Legal Counsel, Appellant – PDS

From: **Doris Flores Brooks, CPA, CGFM**
Public Auditor
OPA Procurement Appeals
Suite 401 DNA Bldg.
238 Archbishop Flores St.
Hagatna, Guam 96910

Agency:	Pages	10 (Including cover)
CC: All Media	Date:	February 15, 2016
Fax: Cabot Mantanona/GCC: 646-0777 Berman O'Connor & Mann/PDS: 477-4366	Point of Contact Nos.	Tel: 475-0390 x 208 (Jerrick Hernandez) Fax: 472-7951
Re:	Appeal No. OPA-PA-10-005: Settlement Agreement	

Urgent For Review Please Comment Please Reply Please Recycle

●Comments:

Please see attachment for Settlement Agreement.

Please acknowledge receipt of this transmittal by re-sending this cover page along with your firm or agency's receipt stamp, date, and initials of receiver. Thank you.

Jerrick Hernandez – jhernandez@guamopa.org

This facsimile transmission and accompanying documents may contain confidential or privileged information. If you are not the intended recipient of this fax transmission, please call our office and notify us immediately. Do not distribute or disclose the contents to anyone. Thank you.

RECEIVED
OFFICE OF PUBLIC ACCOUNTABILITY
PROCUREMENT APPEALS

CABOT
MANTANONA LLP
929 South Marine Corps Dr., Ste. 200
Tamuning, Guam 96913
Telephone: (671) 646-2001
Facsimile: (671) 646-0777

DATE: 02/10/2016
TIME: 10:52 AM PM BY: AA
FILE NO OPA-PA: 10-005

Attorney for Appellee, Guam Community College

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

In the Matter of Appeal of)
PACIFIC DATA SYSTEMS, INC,)
)
Appellant.)
)
)
)
)
)
)
_____)

Docket Number: OPA-PA-10-005
SETTLEMENT AGREEMENT

Come now Appellant Pacific Data Systems, Inc. (hereinafter "PDS") and Appellee Guam Community College (hereinafter "GCC"), by and through their respective undersigned counsel of record, and hereby stipulate and agree to fully and finally resolve the above-captioned matter and to dismiss this matter with prejudice as follows:

1. GCC agrees to pay a total amount of \$10,649.59 as a total award of costs to PDS for the reasonable costs incurred in connection with PDS' bid preparation and August 3, 2010 protest, pursuant to 5 Guam Code Annotated ("GCA") § 5425(h) and in accordance with the Decision of the Office of Public Accountability ("OPA") issued on January 12, 2011. All other costs and fees sought by PDS in relation to the above-captioned matter are hereby expressly released and waived by PDS.

2. PDS and GCC each agree that, except as expressly set forth herein, each of them shall bear their respective fees and costs.

ORIGINAL

3. PDS and GCC each agree that this is a full and final settlement of OPA-PA-10-005, the above-captioned matter, which is to be dismissed with prejudice.

4. **Independent Advice of Counsel.** PDS and GCC each represents and declares that it has or could have received independent advice from its respective attorneys with respect to the advisability of making the settlement provided for herein and with respect to the advisability of executing this Agreement. PDS and GCC each further represents and declares that it has not relied upon any statement or representation by the other or by any of its partners, agents, employees, or attorneys in executing this Agreement or in making the settlement provided for herein, except as expressly provided for herein.

5. **Voluntary Agreement.** PDS and GCC each represents and declares that it has carefully read this Agreement, that it knows the contents of this Agreement, and that it has signed the same freely and voluntarily. By entering into this Agreement, GCC does not admit to any legal liability other than as may be created under this Agreement.

NOW, THEREFORE, PDS and GCC each agree and request the OPA to dismiss with prejudice the above-captioned appeal.

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SO STIPULATED:

BERMAN, O'CONNOR & MANN
Attorneys for *Pacific Data Systems, Inc.*

By: 
BILL R. MANN, ESQ.

Date: 01/27/2016

PACIFIC DATA SYSTEMS, INC.

By:
JOHN DAY, PRESIDENT

Date: 1/27/2016

CABOT MANTANONA LLP
Attorneys for *Guam Community College*

By: 
MATTHEW S. KANE, ESQ.
REBECCA J. WRIGGINGTON, ESQ.

Date: 02/10/16

GUAM COMMUNITY COLLEGE

By:
MARY OKADA, PRESIDENT

Date: 12.14.2015

SO ORDERED: 2/15/16

OFFICE OF PUBLIC ACCOUNTABILITY
The Public Auditor of Guam

By: 
for **DORIS FLORES BROOKS**

RELEASE OF ALL CLAIMS

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of the sum of Ten Thousand Six Hundred Forty Nine Dollars and Fifty-Nine Cents (\$10,649.59) in lawful money of the United States, Pacific Data Systems, Inc. (hereinafter referred to as "PDS" or "Releasor") does by these presents remise, release and forever discharge Guam Community College (hereinafter referred to as "GCC" or "Releasee"), to include its agents, servants, officers, employees, and each of them, and all other persons, firms, corporations, insurers, associations or partnerships, having any interest in or in any way connected with said Releasee, from all claims, actions, causes of action, rights, and demands for damages of every kind and nature whatsoever, including but not limited to any and all claims for costs, fees, expenses, and compensation, both past and future, which the said Releasor shall or may have or which may hereafter accrue on account of or in any way growing out of any and all known and unknown, foreseen and unforeseen injuries and or damages and the consequences thereof against Releasee, or any persons, firms, corporations, insurers, associations or partnerships by reason of or arising or resulting from PDS' bid preparation, protest, and appeal with the Office of Public Accountability (hereinafter referred to as "OPA") in connection with IFB GCC-FB-015 for Voice Over-Internet Protocol (VoIP) Telephone System Project, and particularly without lessening or limiting the force or generality of the foregoing, from all claims and demands set forth in that certain action entitled *In the Appeal of Pacific Data Systems, Inc.*, Office of Public Accountability, Appeal No. OPA-PA-10-005, and all claims and

Initials: BM

EXHIBIT

demands set forth in the PDS Statement dated July 7, 2015 in the total amount of \$47,100.83 and attached hereto as **Exhibit "A"**, to include the following invoice numbers referenced therein: INV #112023, INV #120532, INV #120767, INV #120774, INV #121056, INV #121903, INV #121909, INV #121952, INV #122584, INV #122591, INV #123134, INV #123148, INV #130216, and INV #130222.

In further consideration of the payment made herein, the undersigned Releasor does hereby knowingly, voluntarily, and expressly waive the benefits of the provisions of 18 G.C.A. §82602 (Section 1542 of the Civil Code of Guam), which reads as follows:

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

The undersigned Releasor further declares and represents that this Release of All Claims expresses a full and complete settlement of a liability claimed and denied, and that regardless of the adequacy of the compensation, this Release of All Claims is intended to avoid litigation, and that there is absolutely no promise, inducement or agreement on the part of Releasee to make any payment or do any act or thing other than what is expressly stated and clearly agreed to herein, and that this Release of All Claims contains the entire agreement between the parties hereto, and that the terms of this Release of All Claims are contractual and not a mere recital.

Releasor understands and expressly warrants and represents that, by entering into and executing this Release of All Claims, he will undertake to satisfy or compromise all liens or other claims of any nature whatsoever asserted by any person or entity against Releasor or Releasee with respect to the incident or against the proceeds of the

Initials:

Bm
[Signature]

settlement, or that he has already done so, and that he will indemnify and hold Releasee, and its attorneys of record, harmless with respect to any such claims.

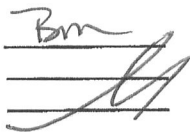
Releasor expressly undertakes, warrants and represents that he will indemnify Releasee and its attorneys of record for any and all liabilities incurred, including reasonable attorneys' fees, should any representation or warranty Releasor makes in this Release of All Claims prove to be false, or should Releasor at any time repudiate or attempt to repudiate this Release of All Claims or any of its terms, or the settlement it is intended to document.

Releasor further agrees to indemnify, defend and hold harmless Releasee, its agents, servants, officers, and employees, and each of them, and all other persons, attorneys, firms, corporations, associations, or partnerships, having any interest in or in any way connected with said Releasee from and against any and all loss, liability, and expense of whatsoever kind or nature, including attorneys' fees, which may arise from the assertion by Releasor of any claim against anyone arising out of the above-indicated matter.

Payment of the sum herein mentioned has been and is made by Releasee in compromise of a disputed claim between the parties and is intended to extinguish all rights and liabilities concerning such claim. Payment is not to be construed as an admission of liability by Releasee or anyone else.

The undersigned Releasor hereby declares that he has read the foregoing Release of All Claims and that the meaning thereof has been explained to him by his attorneys, who have also caused this document to be executed and that he fully

Initials: _____



understands and appreciates the meaning thereof, and that he has executed the same of his own free will and accord.

This Release of All Claims consists of four (4) pages, each of which has been initialed by Releasor at the lower left corner, and a copy of this Release of All Claims has been retained by Releasor.

Dated this 30 day of JANUARY, 2015. *el*

CAUTION: READ BEFORE SIGNING BELOW

PACIFIC DATA SYSTEMS, INC.
Releasor

By: 
JOHN DAY, President

ATTORNEY'S CONSENT

I have read the foregoing Release of All Claims and approve it as to substance and as to form and have advised my client to execute it.

Dated this 27th day of January, 2015. *2016 (3pm)*

BERMAN O'CONNOR & MANN

By:


BILL R. MANN, ESQ.

Initials:

Bm

el



185 Ilipog Drive
 HBC Building, Suite 204A
 Tamuning, GU 96913
 T: (671) 300-0200 | F: (671) 300-0265
 E: pds_billing@pdsguam.com

Statement

Date
7/7/2015

YOUR ACCOUNT IS PAST DUE

Please remit balance due immediately to avoid suspension of service.

Effective with August 2015 billing, any unpaid balance will be subject to applicable late fees and interest charges.

To:
Guam Community College Attn: Accounts Payable P.O. Box 23069 GMF, GU 96921

Statement of Account				Amount Due	Amount Enc.
				\$47,100.83	
Date	Transaction	Amount	Balance		
05/27/2011	INV #112023. Due 06/11/2011. Orig. Amount \$21,299.17. GCC-10-0015	21,299.17	21,299.17		
09/30/2011	INV #120532. Due 10/15/2011. Orig. Amount \$19,377.00. expense reimburse-court order	19,377.00	40,676.17		
11/30/2011	INV #120767. Due 11/30/2011. Orig. Amount \$370.71. LF OCT11	132.49	40,808.66		
12/19/2011	INV #120774. Due 12/19/2011. Orig. Amount \$315.91. LF NOV11	315.91	41,124.57		
01/30/2012	INV #121056. Due 01/30/2012. Orig. Amount \$315.91. LF DEC11	315.91	41,440.48		
03/31/2012	INV #121903. Due 04/15/2012. Orig. Amount \$656.57. LF JAN12	656.57	42,097.05		
03/31/2012	INV #121909. Due 04/15/2012. Orig. Amount \$606.57. LF FEB12	606.57	42,703.62		
04/18/2012	INV #121952. Due 05/03/2012. Orig. Amount \$608.84. LF MAR12	608.84	43,312.46		
05/31/2012	INV #122584. Due 06/15/2012. Orig. Amount \$606.57. LF APR12	606.57	43,919.03		
06/04/2012	INV #122591. Due 06/19/2012. Orig. Amount \$606.57. LF MAY12	606.57	44,525.60		
07/31/2012	INV #123134. Due 07/31/2012. Orig. Amount \$606.57. LF JUN12	606.57	45,132.17		
08/20/2012	INV #123148. Due 08/20/2012. Orig. Amount \$672.30. LF JUL12	672.30	45,804.47		
09/30/2012	INV #130216. Due 10/08/2012. Orig. Amount \$686.85. LF AUG12	686.85	46,491.32		
10/08/2012	INV #130222. Due 10/08/2012. Orig. Amount \$609.51. LF Sep2012	609.51	47,100.83		
CURRENT	1-30 DAYS PAST DUE	31-60 DAYS PAST DUE	61-90 DAYS PAST DUE	OVER 90 DAYS PAST DUE	Amount Due
0.00	0.00	0.00	0.00	47,100.83	\$47,100.83

EXHIBIT "A"

Hagåtña, Guam

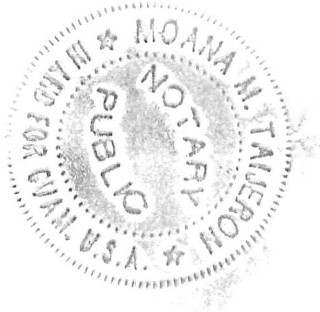
)
)
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ss:

On this 30th day of January, ^{2016 MT} ~~2015~~, before me a Notary Public of the Territory of Guam, personally appeared **JOHN DAY**, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same as her free and voluntary act and deed for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand affixed my official seal the date last above written.

Moana M. Taijeron

NOTARY PUBLIC



MOANA M. TAIJERON
NOTARY PUBLIC
In and for Guam, U.S.A.
My Commission Expires: **JUNE 15, 2019**
246 Lada Avenue Dededo, GU 96929

Initials: *JD*

TRANSACTION REPORT

FEB/15/2016/MON 03:28 PM

BROADCAST

#	DATE	START T.	RECEIVER	COM. TIME	PAGE	TYPE/NOTE	FILE
001	FEB/15	03:20PM	6460777	0:03:39	10	MEMORY OK	G3 5987
002		03:25PM	4774366	0:03:23	10	MEMORY OK	G3 5987
TOTAL				0:07:02	20		



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Jerrick Hernandez - jhernandez@guamopa.org

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