



REQUEST FOR PROPOSALS
GBHWC RFP 08-2015

Professional Services Providing Community Habilitation and Day Activities
For Adults with Significant Disabilities

Amendment #1

DATE: 10/13/2015

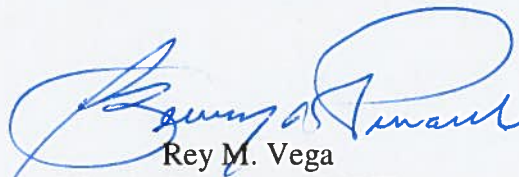
The above numbered and described solicitation is amended and set forth below:

1. GBHWC RFP FORM E SAMPLE CONTRACT on page 45 of 47 is to be replaced and provided through this amendment.
2. The RFP is extended with regard to the GBHWC RFP FORM E SAMPLE CONTRACT. The last day for questions regarding the sample contract is Wednesday, October 15, 2015 4:00 pm Chamorro Standard Time.
3. Section IV.A. Questions, Receipt, and Registration of Proposals, page 18 of 47

Extension. To extend the proposal deadline, the last sentence of the first paragraph shall read:

“The deadline for receipt of proposals by GBHWC is now extended to and no later than Monday, October 19, 2015, 4:00pm Chamorro Standard Time.”

Submission of completed acknowledgment receipt is required and appreciated.



Rey M. Vega
Director/Procurement Officer
10/13/2015



**GUAM BEHAVIORAL
HEALTH AND WELLNESS
CENTER**

REQUEST FOR PROPOSALS

GBHWC RFP 08-2015

Amendment #1

DATE: 10/13/2015

ACKNOWLEDGEMENT

By my signature below, I hereby acknowledge receipt of and compliance with this amendment to the above referenced RFP.

<i>NAME OF BIDDER OR OFFEROR</i>
<i>MAILING ADDRESS</i>
<i>PRINTED NAME</i>
<i>SIGNATURE</i>
<i>TITLE</i>
<i>DATE</i>

For those reviewing this proposal amendment from the website, this acknowledgement form can be dropped off at 790 Governor Carlos G. Camacho Road, Tamuning, Guam, during weekdays, except Holidays and weekends, faxed at 671-649-6948 or emailed to maelei.sampson@gbhwc.guam.gov.

Any questions regarding this amendment must be submitted in writing to Maelei Rose Sampson.

REY M. VEGA
Procurement Officer
PHONE: **647-1901**
FAX: **649-6948**

GBHWC RFP FORM E

(SAMPLE)
CONTRACTUAL AGREEMENT
BETWEEN
GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER
AND

Professional Services Providing Community Habilitation and Day Activities For Adults with Significant Disabilities

GBHWC RFP 08-2015

This AGREEMENT is made between GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER, an agency of the GOVERNMENT OF GUAM, (hereinafter called GBHWC), whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96913, and _____ (hereinafter called Service Provider) whose office address is _____.

WHEREAS, GBHWC was renamed from the Department of Mental Health and Substance Abuse, pursuant to P.L. 32-024 (May 6, 2013) codified at 10 GCA Section 86102 (a); and

WHEREAS, GBHWC adhering to the Amended Permanent Injunction in the United States District of Guam Case No. CV01-00041 CBM; J.C., et al. v. Camacho, et al; and its enabling statute in the Guam Code Annotated Title 10 Chapter 86 §86105 to provide community habilitation an day activities for adults with significant disabilities; and

WHEREAS, GBHWC intends to engage professional services of the Service Provider for the purpose of providing its Residential and Support Services Program; and

WHEREAS, GBHWC has provided adequate public announcement of the need for such service through a Request for Proposal (GBHWC RFP 08-2015) describing the type of services required and specifying the type of information and data required of each offer, and the relative importance of particular qualifications; and

WHEREAS, Service Provider has submitted its proposal and interest in providing such services; and

WHEREAS, the award of this Agreement to Service Provider has been made pursuant to a written finding by GBHWC that Service Provider is qualified based on the evaluation factors set forth in the request for proposal, and that compensation have been determined to be fair and reasonable; and

NOW THEREFORE, GBHWC and Service Provider, in consideration of mutual covenants hereinafter set forth, agree as follows:

SECTION I.
PURPOSE

To provide GBHWC with management and operational professional services for GBHWC's Residential and Supports Services Program with community habilitation and day activities for adults with significant disabilities through a qualified professional Service Provider. Service Provider shall perform services in accordance with The

United States District Court, District of Guam Civil Case No. CV01-00041 and all applicable Federal, Government of Guam, GBHWC laws, rules, regulations, and orders.

SECTION II.
SCOPE OF WORK

(The Scope of Work is to be completed at a future date; see RFP Scope of Work.)

SECTION III.
CONTRACT TERM

III.1. Effective Date. This Agreement shall be effective upon the date of the signature of the Governor of Guam. GBHWC is not responsible for any services prior to that date, and Service Provider warrants that no services will be performed under this Agreement prior to the effective date.

III.2. Initial Term. The term of this Contract Agreement shall be three (3) years from the effective date and shall end September 30, 2018, subject to the appropriation, allocation and availability of funds.

III.3. Special Monthly Extension Periods. At the option of GBHWC and as agreed to by Service Provider, this Agreement may be extended after the Term on a month-to-month basis (each being a "Monthly Extension Period"), to begin immediately after the expiration of the Term, provided that in no event may the parties agree to more than six Monthly Extension Periods. The Monthly Extension Periods may be agreed to by the parties if GBHWC is unable to continue the services uninterrupted under a new contract after a new solicitation and procurement undertaken by GBHWC. Any Special Monthly Extension Period are subject to wage and benefit compliance and the appropriation, the allocation and availability of funds from fiscal year to fiscal year and GBHWC's determination of its best interest.

III.4 Multiple Certification of Funds. There may be multiple certifications of funds by GBHWC during any term of this agreement.

SECTION IV.
SERVICE PROVIDER'S COMPENSATION FOR SERVICES

IV.1. Annual and Monthly Compensation. (This section is to be completed at a later date.)

IV.2. Invoicing and Payments. All compensation is subject to the appropriation, allocation and availability of funds, upon completion of the services and receipt of any deliverables and a monthly invoice in the form agreed to by the parties. Payment shall be based upon actual costs, as defined in 2 GAR Division 4 § 7101 (1), submitted less disallowed costs and penalties, as applicable. Compensation based upon the aggregate of actual cost submitted may be less than the agreed upon compensation, but in no event shall it exceed the agreed upon compensation. The invoice should reflect only those service fees incurred for the current billing period. Each invoice should also include the total amount billed from the inception of the current year contract. All invoices are subject to review and approval by GBHWC. The acceptance and payment of any invoice will not be deemed a waiver of any of GBHWC's rights under this Agreement.

IV.3. Final Payment. GBHWC shall make final payment delivery and acceptance of all services mentioned herein specified and performed. Prior to final payment and as a condition precedent thereto, Service Provider shall execute and deliver to GBHWC a release, in a form provided by GBHWC, of claims against GBHWC and the government of Guam arising under and by virtue of this Agreement. Additionally prior to final

payment and as condition precedent thereto, Service Provider shall ensure a smooth program transition; and shall immediately provide GBHWC with all program related information, files, major equipment, service contributions/program income (contributions, donations, and gifts) remaining balances and all other operational and administrative and service documents and/or items.

IV.4. Allowable Costs – Cost Reimbursement

Service Provider agrees to comply with the following standards of financial management:

a. Financial Records.

Service Provider shall provide complete, accurate, and current financial disclosures of the project or program in accordance with any financial reporting requirements, as set forth in the financial provisions.

b. Accounting Records.

Service Provider shall continuously maintain and update records identifying the source and use of funds. The records shall contain information pertaining to the contract, authorizations, obligations, unobligated balances, assets, outlays, and income.

c. Internal Control.

Service Provider shall maintain effective control over and accountability for all funds and assets. Service Provider shall keep effective internal controls to ensure that all GBHWC funds received are separately and properly allocated to the activities described in this Agreement. Service Provider shall adequately safeguard all such property and shall ensure that it is used solely for authorized purposes.

d. Source Documentation.

Service Provider shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and sub-grant contract documents, and so forth. All costs invoiced by contract in this contract must be reasonable, lawful, allocable, and accounted for in accordance with generally accepted accounting principles set forth in 2 GAR Division 4 § 7101 or in any federal assistance instrument applicable to this Agreement.

e. Reimbursable Cost Principles.

Service Provider shall support all accounting records with source documentation. These documentations include, but are not limited to, cancelled checks, paid bills, payrolls, contract and sub-grant and/or contract documents and so forth.

f. Allowable Cost.

Total allowable cost of this Agreement is the sum of allowable direct costs actually incurred in the performance of this Agreement in accordance with the terms of the contract, plus the properly allowable indirect costs, less any applicable credits. Costs shall be allowed to the extent they are: reasonable as defined in 2 GAR Division 4 § 7101 (d); and allocable, as defined in 2 GAR Division 4 § 7101 (e) and lawful under any applicable law; and not unallowable under 2 GAR Division 4 § 7101(f). In the

case of costs invoiced for reimbursement, they must be actually incurred or accrued and accounted for in accordance with generally accepted accounting principles.

g. Applicable Credits.

Applicable credits are receipts or price reductions which reduce expenditures allocable to contracts as direct or indirect costs, as defined in 2 GAR Division 4 § 7101 (h). In the event Service Provider receives discounts, rebates and or other applicable credits accruing to or received by Service Provider or any subcontractor under the contract, to the extent those credits are allocable to the allowable portion of the cost billed to GBHWC; allowable costs will be paid to the Contactor, net of all discounts, rebates and other such applicable credits. Service Provider must separately identify for each cost submitted for payment to GBHWC the amount of cost that is allowable; must identify all unallowable costs; or Service Provider must exclude all unallowable costs from its billing documents and certify that only allowable costs are submitted for payment and records have been established that maintain the visibility of unallowable costs, including directly associated costs in a manner suitable for contract cost determination and verification.

Service Provider must identify the amount of each discount, rebate and other applicable credit on bills and invoices presented to GBHWC for payment and individually identify the amount as a discount, rebate or in case of other applicable credits, the nature of the credit. GBHWC may permit Service Provider to report this information on a less frequent basis than monthly, but no less frequently than annually. Service Provider must identify the method by which it will report discounts, rebates and other applicable credits allocable to the contract that are not reported prior to conclusion of the contract.

SECTION V.
THE GOVERNMENT IS NOT LIABLE

V.1. GBHWC assumes no liability for any accident or injury that may occur to Service Provider, his or her agents, dependents, or personal property while in route to or from worksite or during any travel mandated by the terms of this Agreement.

V.2. GBHWC shall not be liable to Service Provider for any work performed by Service Provider prior to the approval of this Agreement by the Governor of Guam and Service Provider hereby expressly waives any and all claims for services performed in expectation of this Agreement prior to its approval by the Governor of Guam.

SECTION VI.
SPECIAL REPORTING REQUIREMENT FOR NON-PROFIT ORGANIZATIONS

VI.1. In the event that Service Provider is a non-profit organization, Service Provider shall comply with the reporting requirements set forth in P.L. 33-66 Chapter XIII § 6 and this clause. In the event one of Service Provider's subcontractors is a non-profit organization the provisions of this clause shall also be deemed to apply to Service Provider's subcontractor, and Service Provider is obligated to submit its non-profit subcontractor's information in the same manner and time periods.

VI.2. Service Provider shall maintain accurate financial records of all monies paid to it under this Agreement. Service Provider shall provide to GBHWC a budgetary breakdown by object category as to all services under this Agreement. An initial proposed budgetary breakdown is part of the request for proposal, and

the agreed cost proposal, budget, staffing request and are incorporated into the scope of services of this Agreement as part of Attachment A.

VI.3. Service Provider shall provide to GBHWC a quarterly report describing its activities during the reporting period and the results it achieved no later than twenty (20) days after the end of each Quarter.

VI.4 Service Provider must provide prior written notification to GBHWC of all procurement of equipment and services of Five Thousand Dollars (\$5,000.00) or more as to its services related to this Agreement, or with regard to items to be invoices as part of the contract.

VI.5. Service Provider shall provide access to duly authorized representative of GBHWC, the Guam Public Auditor, or their authorized representatives, to any and all appropriate records for the purpose of audit and examination of books, documents, papers, and records of funds expended as part of the contract. Service Provider shall upon written request by GBHWC, the Guam Public Auditor or their authorized representatives provide source documentation, including but not limited to copies of checks or receipts, employee pay statement, inventory receipt, attendance records, utility bills.

VI.6. Service Provider is subject to the Single Audit Rules shall provide annually to GBHWC copies of its Audit Reports for all time periods covered as part of this Agreement.

VI.7. Service Provider shall provide certified detailed inventory listing of each Fiscal Year's purchases under the contract to GBHWC as well as a Fiscal Year-end report of all expenditures of funds under the contract no later than November 15, the initial year, and November 15, of the each subsequent year.

VI.8. In the event Service Provider fails to timely provide any reports or items set forth in this section to GBHWC after prior written reasonable notice by GBHWC to Service Provider and Service Provider's failure to cure the contract default, GBHWC in addition to other contractual rights and remedies under this contract, may withhold payment of Ten Percent (10%) of any amounts that are invoiced under this contract by Service Provider.

SECTION VII.

GBHWC AGREES TO THE FOLLOWING

VII.1. Maintain oversight of Service Provider's performance in administering GBHWC Residential and Support Services Program.

VII.2. Use of selected equipment as negotiated with Service Provider when providing direct therapeutic intervention and/or activities to consumers.

SECTION VIII.

RESPONSIBILITY OF SERVICE PROVIDER

VIII.1. Service Provider shall be responsible for the professional and technical accuracy of all work and materials furnished under this Agreement. Service Provider shall, without additional cost to GBHWC, re-do services, correct or revise all errors or deficiencies in its services, work and material identified during the term of the contract, and any applicable warranty period.

VIII.2. Service Provider shall devote its best efforts to the duties and responsibilities under this Agreement in accordance with the laws, rules, regulations and policies of the Government of Guam.

VIII.3. GBHWC's review, approval, acceptance of, and payment of fees for services required under this Agreement, shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of Service Provider's failure of performance, except as provided herein, and Service Provider shall be, and remain liable, to GBHWC for all direct costs which may be incurred by GBHWC as result of Service Provider's negligent performance of any of the services or work which are performed under this Agreement.

SECTION IX.

ACCESS TO RECORDS AND OTHER REVIEW:

IX.1. Service Provider, including its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by GBHWC, the Public Auditor, and any applicable federal granting agency, Inspector General or its delegate. Each subcontract by Service Provider pursuant to this Agreement shall include a provision containing the conditions of this Section.

IX.2. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the end of the three (3) year period, the records must be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.

IX.3. Records for non-expendable property acquired in whole or in part, with funds from this contract funds must be retained for three (3) years after its final disposition.

IX.4. Service Provider shall provide access to any project site(s) to GBHWC, Guam Public Auditor and in the event there are federal funds, the federal granting agency or its designated Inspector General or their authorized representative. The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are kept.

SECTION X.

OWNERSHIP OF DOCUMENTS

All briefs, memoranda and incidental work or materials furnished hereunder shall be and remain the property of GBHWC including all publication rights and copyright interests, and may be used by GBHWC without any additional cost to GBHWC.

SECTION XI.

INDEMNITY

Service Provider agrees to save and hold harmless GBHWC, its officers, agents, representatives, successors and assigns, and other governmental agencies from any and all actions, proceedings, claims, demands, costs, damage, attorney fees and all other liabilities and expense of any kind or any source which may arise out of the performance of this Agreement, caused by the negligent act or failure of Service Provider, its officers, employees, servants, or agents, or if caused by the actions of any client of Service Provider resulting in injury or damage to persons or property during the time when Service Provider or any of officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by Service Provider or any officer, agent, employee, servant or subcontractor under this Agreement is brought against Service Provider, Service Provider shall as soon as

practicable but no later than two (2) days after it receives notice thereof, notify the Director of GBHWC by certified mail.

SECTION XII. CHANGES

GBHWC may at any time, by written order make any change in the services to be performed hereunder. If such changes cause an increase or decrease in the costs of doing the work under this Agreement, or in the time required for this performance, an equitable adjustment shall be made and this Agreement shall be modified in writing accordingly.

SECTION XIII. INSURANCE

Service Provider shall procure and maintain in effect Workers Compensation, Commercial General Liability, and Comprehensive General Liability Insurance coverage for the operation of the services set forth in this Agreement. Service Provider shall provide certificates of such insurance to GBHWC when required and shall immediately report in writing to GBHWC any insurance claims filed.

XIII.1. Workers Compensation Insurance that covers all employees of Service Provider working in any capacity in Service Provider's services under this Agreement, in the amount as required by Guam law.

XIII.2. Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than one million dollars (\$1,000,000.00) per occurrence and/or combined single-limit bodily injury and property damage. Service Provider shall ensure the insurance is issued by a company authorized to do business on Guam with minimum limits of not less than one million dollars (\$1,000,000.00) for bodily injuries or death per occurrence, and not less than three hundred thousand (\$300,000.00) for damages to property. Such policy shall insure GBHWC and its respective agents and employees with respect to liability as a result of the operation of the services set forth in this Agreement.

XIII.3. Professional Liability Insurance in a form acceptable to GBHWC and with a limit of liability of not less than one million dollars (\$1,000,000.00).

SECTION XIV. TERMINATION

XIV.1. Termination for Defaults

- a. **Default.** If Service Provider refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this Agreement, GBHWC may notify Service Provider in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by GBHWC, GBHWC may terminate Service Provider's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, GBHWC may procure similar professional services in a manner and upon terms deemed appropriate by GBHWC. Service Provider shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar professional services, goods or services.

- b. **Service Provider's Duties.** Notwithstanding termination of the Agreement and subject to any directions from GBHWC, Service Provider shall take timely, reasonable, and necessary action to protect and preserve property in possession of Service Provider in which GBHWC has an interest.
- c. **Compensation.** Payment for completed professional services delivered and accepted by GBHWC shall be per Section IV Compensation for Service Provider's services. GBHWC may withhold from amounts due Service Provider such sums as GBHWC deems to be necessary to protect GBHWC against loss because of outstanding liens or claims of former lien holders and to reimburse GBHWC for the excess costs incurred in procuring similar professional services. Service Provider may pursue its rights under Section XVI Mandatory Disputes clause of this Agreement, and the Guam Procurement Laws and Regulations if it disagrees with GBHWC's decision with regard to compensation.
- d. **Erroneous Termination for Default.** If, after notice of termination of Service Provider's right to proceed under the provisions of this clause, it is determined for any reason that Service Provider was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Section XXII Force Majeure of this Agreement, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such clause..
- e. **Additional Rights and Remedies.** The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Agreement.
- f. **Non-Profit Organization Special Reporting Requirements.** Service Provider, if a non-profit organization subject to Section VI Special Reporting Requirements of Non-Profit Organizations (P.L. 33-66 Chapter XIII § 6); and if the Service Provider fails to timely provide any reports or items set forth in Section VI Special Reporting Requirements for Non Profit Organizations of this Agreement; then GBHWC pursuant to that section my after prior written reasonable notice to Service Provider and Service Provider's failure to cure the contract default, GBHWC in addition to other contractual rights and remedies under this Agreement, may withhold payment of Ten Percent (10%) of any amounts that are invoiced under this contract by Service Provider.

XIV.2. Termination for Convenience

- a. **Termination.** The Director of GBHWC may, when the interest of GBHWC so requires, terminate this Agreement in whole or in part, for the convenience of GBHWC. The Director of GBHWC shall give thirty (30) days prior written notice of the termination to Service Provider specifying the part of the contract terminated and when termination becomes effective.
- b. **Service Provider's Obligations.** Service Provider shall incur no further obligations in connection with the terminated professional services and on the date set in the notice of termination, Service Provider will stop work to the extent specified. Service Provider shall also terminate outstanding orders and subcontracts as they relate to the terminated professional services. Service Provider shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated professional services. Service Provider must still complete the professional services not terminated by the notice of termination and may incur obligations as are necessary to do so.

In the event there is any deliverables and/or reports due per this Agreement, Service Provider and GBHWC shall meet and set up the delivery dates for those items if it not set forth in the written notice of termination.

- c. **Compensation.**

Service Provider shall invoice GBHWC in keeping Section IV Compensation for Service Provider's Services for professional services performed up to the date of termination.

XIV.3 Program Transition

In the event of the termination under this Section XIV. Termination, Service Provider shall take all steps necessary to ensure a smooth and professional transition of the program to prevent any interruption of the services to the clients and to preserve the integrity of the program. Service Provider shall immediately prepare to relinquish all program related information, files, major equipment items, service contributions, and program income (contributions, donations, and gifts) remaining balances and all other operational and administrative and service documents and/or items to GBHWC.

SECTION XV. PRODUCT OF SERVICE-COPYRIGHT

All materials developed or acquired by Service Provider under this Agreement shall become the property of the GHWC and shall be delivered to GBHWC no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by Service Provider under this Agreement shall be subject of an application for copyright or other claim of ownership by or on behalf of Service Provider.

SECTION XVI. MANDATORY DISPUTE RESOLUTION CLAUSE

In the event of a conflict between this "Mandatory Disputes Resolution Clause" and any other terms in this Agreement, it is the intent of GBHWC and Service Provider that the terms of this clause are to be given precedence.

XVI.1. Disputes - Contractual Controversies

GBHWC and Service Provider agree to attempt resolution of all controversies which arise under, or are by virtue of, this Agreement through mutual agreement. If the controversy is not resolved by mutual agreement, then Service Provider shall request the Director of GBHWC or his designee, in writing to issue a final decision within sixty days after receipt of the written request in keeping with 5 GCA § 5427 (c). The Director of GBHWC or his designee shall immediately furnish a copy of the decision to Service Provider, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

XVI.2. Absence of a Written Decision within Sixty Days

If the Director of GBHWC, or his designee does not issue a written decision within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Service Provider may proceed as though the Director of GBHWC, or his designee had issued a decision adverse to Service Provider.

XVI.3. Appeals to the Office of Public Accountability

The Director of GBHWC, or his designee's decision shall be final and conclusive, unless fraudulent or unless Service Provider appeals the decision administratively to the Public Auditor in accordance with 5 GCA § 5706.

XVI.4. Disputes – Money Owed To or By the Government of Guam

This subsection applies to appeals of GBHWC's decision on a dispute. For money owed by or to the government of under this Agreement, Service Provider shall appeal the decision in accordance with the "Government Claims Act", 5 GCA § 6101 et. seq., by initially filing a claim with the Office of the Attorney General

no later than eighteen months after the decision is rendered by the government of Guam or from the date when a decision should have been rendered. For all other claims by or against GBHWC under this Agreement, the Office of the Public Auditor has jurisdiction over the appeal from the decision of GBHWC. Appeals to the Office of the Public Auditor must be made within sixty days of GBHWC's decision or from the date the decision should have been made.

XVI.5. Exhaustion of Administrative Remedies

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

XVI.6. Performance of Contract Pending Final Resolution by the Court

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

SECTION XVII. MANDATORY REPRESENTATIONS BY SERVICE PROVIDER

XVII.1. Ethical Standards

With respect to this procurement and any other contract that Service Provider may have, or wish to enter into, with GBHWC, Service Provider represents that it has not knowingly influenced, and promises that it will not knowingly influence, any government employee to breach any of the ethical standards set forth in the Guam Procurement Law and in any of the Guam Procurement Regulations.

XVII.2. Prohibition Against Gratuities and Kickbacks

With respect to this procurement and any other contract that Service Provider may have or wish to enter into with GBHWC, Service Provider represents that he/she/it has not violated, is not violating, and promises that he/she/it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Regulations.

XVII.3. Prohibition Against Contingent Fees

Service Provider represents that he has not retained any person or agency upon an agreement or understanding for a percentage, commission, brokerage, or other contingent arrangement, except for retention of bona fide employees or bona fide established commercial selling agencies, to solicit or secure this contract or any other contract with the government of Guam.

XVII.4. Prohibition of Employment of Sex Offenders

Pursuant to 5 G.C.A. § 5253: No person convicted of a sex offense under the provisions of 9 GCA Chapter 25, or an offense as defined in GCA Chapter 28 Article 28, on Guam, or an offense in any jurisdiction which includes, at a minimum, all of the elements of said offenses, or who is listed on the Sex Offender Registry,

and who is employed by a business contracted to perform services for an agency or instrumentality of the government of Guam, shall work for his employer on the property of the government of Guam other than a public highway;

Service Provider warrants (1) that no person providing services on behalf of Service Provider has been convicted of a sex offense as set forth in the preceding subsection; and (2) that if any person providing services on behalf of Service Provider is convicted of a sex offense under the provisions of 9 GCA Chapter 25 or 9 GCA Chapter 28 Article 2, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

For the purposes of this "Prohibition of Employment of Sex Offenders Clause" in the event Service Provider is providing services that involve direct contact with GBHWC consumers, customers or potential eligible receivers of GBHWC community behavioral health wellness services all locations where there is contact with those individuals is considered for purposes of this clause in this contract "property of the government of Guam".

XVII.5. Wage and Benefit Compliance – Service Providers Providing Services

Service Provider shall comply with 5 GCA § 5801 et. seq., and with regard to all persons it employs whose purpose in whole or in part is the direct delivery of services contracted for with GBHWC in this procurement, shall pay such employees in accordance with the Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor for such labor as is employed in the direct deliverance of deliverables to the government of Guam. Service Provider shall be responsible for flowing down this obligation to its subcontractors.

The Wage Determination most recently issued by the U.S. Department of Labor at the time this Agreement is awarded to Service Provider shall be used to determine wages and benefits which shall be paid to employees pursuant to this clause.

The Wage Determination promulgated by the U.S. Department of Labor on a date most recent to the renewal date shall apply to any renewal terms of this Agreement.

Service Provider agrees that in addition to the Wage Determination detailed above, health and similar benefits for employees having a minimum value as detailed in the Wage Determination issued and promulgated by the U.S. Department of Labor shall apply. Service Provider shall pay a minimum of ten (10) paid holidays per annum per employee.

Service Provider shall flow the Wage and Benefit Compliance clauses above through to any of its subcontractor under this Agreement.

Service Provider agrees that any violation of Service Provider's obligations or its subcontractors obligations as set forth in this Section "Wage and Benefit Compliance Service Providers Providing Service's Clause" shall be investigated by the Guam Department of Labor and may include a monetary penalty assessment by the Guam Department of Labor of no less than One Hundred Dollars (\$100.00) per day, and no more than One Thousand Dollars (\$1,000.00) per day, until such time as a violation has been corrected, as well as the payment of all back wages and benefits due.

In addition to any and all other breach of contract actions, GBHWC may have under this procurement, in the event there is a violation in the process set forth in the preceding subsection, Service Provider may be placed

on probationary status by the Director of GBHWC, for a period of one (1) year. During the probationary status, Service Provider shall not be awarded any contract by any instrumentality of the government of Guam. Service Provider if it is placed on probationary status, or has been assessed a monetary penalty pursuant to this "Wage and Benefit Compliance Service Providers Providing Services Clause" may appeal such penalty or probationary status to the Superior Court of Guam as set forth in 5 GCA § 5804.

Service Provider's Declaration of Compliance with Wage Determination with the attached most recent Wage Determination for Guam and the Northern Marianas Islands issued and promulgated by the U.S. Department of Labor is applicable to this contract.

Service Provider agrees to provide upon written request by GBHWC written certification of its compliance with its obligations under this "Wage and Benefit Compliance Service Providers Providing Services Clause" as part of each invoice, along with the names of any employees, their positions, and detailed wage and benefits paid in keeping with this section. Additionally upon request by GBHWC, Service Provider shall submit source documents as to those individuals that provide direct services in part or whole under this Agreement and its payments to them of such wages and benefits.

XVII.6. Health Insurance Portability and Accountability (HIPPA)

Service Provider shall comply with the Health Insurance Portability and Accountability Act (HIPPA of 1006, P.L. 104-1991 and the Federal "Standards for Privacy of Individually identifiable "Health Information" promulgated under 45 CFR Part 160 and Part 164, Subparts A and E.

XVII.7. Client Confidentiality

Service Provider shall ensure information obtained directly or directly from a recipient client under this Agreement shall be kept confidential and not released in a form that identifies the person without informed consent of the person, or of his or her legal representative, unless the disclosure is required by court order or for program monitoring by authorized Federal, or Guam monitoring agencies. (Ref. 45 CFR 1321.51 and 42 CFR Part II). Privacy Rule Standards for Privacy of Individually Identifiable Health Information, Ref. 45 CFR Part 160 and Part 164, Subparts A and E.

XVII.8 Confidentiality

Any information provided to or developed by Service Provider in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by Service Provider without the prior written approval of GBHWC.

XVII.9. Technology Access For Blind Or Visually Impaired

Service Provider acknowledges that no government funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired.

XVII.10. Equal Opportunity Compliance

Service Provider agrees to abide by all Federal and Guam laws and rules and regulations, and Executive Orders of the Governor of Guam, pertaining to equal employment opportunity. In accordance with such laws of Guam, Service Provider assures that no person shall on the grounds of race, religion, color, national origin,

ancestry, sexual orientation or gender identity be excluded from employment with or participation in, be denied benefit of, or otherwise be subjected to discrimination under any program or activity under this Agreement. If Service Provider is found not to be in compliance with these requirements during the life of this Agreement, Service Provider agrees to take appropriate steps to correct these deficiencies.

XVII.11. Records Discrimination Against Status Offenders Prohibited

Service Provider acknowledges that no private entity that receives government of Guam funding, either local or federal funds, for any of its programs may, solely on the basis of conviction of a status offense, discriminate against any person who would otherwise be eligible. P.L. 30-168 (effective 7/16/10) codified at § 20120 of Article 1, Chapter 20 of Title 19, Guam Code Annotated.

XVII.12. Restricting the Use of Mobile Phones While Driving a Vehicle, and Providing for the Public Education Requirements Regarding Such Restrictions

Service Provider shall ensure compliance with relative to the restrictions on the use of mobile phones while driving. P.L. 31-194

XVII.13. Drug and Smoke-Free Workplace

Service Provider shall ensure compliance with Federal and local drug and smoke-free workplace laws and requirements. [Federal Drug-Free Workplace Act of 1988, the Governor's Circular No. 89-26 (Governor's Policy Statement Establishing a Drug-Free Workplace) and Clean Indoor Air Act of 1992, P.L. 21-139, Title 10 GCA, Chapter 90].

XVII.14. Social Security Number Confidentiality Act

Service Provider shall ensure compliance relative to preventing the inappropriate disclosure and misappropriation of social security numbers. P.L. 28-95, Article 7, Chapter 32, Title 5, Guam Code Annotated.

XVII.15. Employment of Individuals with Severe Disabilities; P.L. 26-109 Section 2, §41210(b), Article 2, Chapter 41, Division 5, Title 17 of the Guam Code Annotated

Service Provider shall comply with the provision of this mandate with emphasis on the employment of two percent (2%) of its workforce with severe disabilities in coordination with the Division of Vocational Rehabilitation Administrator, Department of Integrated Services for Individuals with a Disability (DISID) for placement. In the event Service Provider is unable to employ due to the lack of individuals with disabilities who are able to work, Service Provider shall utilize funds for the purchase of supplies produced by non-profit organizations employing individuals with disabilities. Efforts to comply with this specification shall be documented by Service Provider and is subject to review and inspection by GBHWC.

SECTION XVIII.
ASSIGNMENT, SUCCESSORS AND ASSIGNS

Neither party may assign or otherwise transfer this Agreement or any of the rights that it grants without the prior written consent of the party. Any purported assignment in violation of the preceding sentence will be void and of no effect. This Agreement will be binding upon the parties' respective successors and permitted assigns.

SECTION XIX.

SUBCONTRACTING

Service Provider shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of GBHWC.

SECTION XX. STATUS OF SERVICE PROVIDER

Service Provider and its agents and employees are Independent Service Providers performing professional services for GBHWC and are not employees of GBHWC. Service Provider and its agents and employees shall not accrue leave, retirement, insurance, bonding use of GBHWC vehicles, or any other benefit afforded to employees of GBHWC as a result of this Agreement. Service Provider acknowledges that all sums received hereunder are reportable by Service Provider for tax purposes, including without limitation, self-employment and business income tax. Service Provider agrees not to purport to bind GBHWC unless Service Provider has express written authority to do so, and then only within the strict limits of that authority.

SECTION XXI. GENERAL COMPLIANCE WITH LAWS

The professional services, deliverables and materials under this Agreement shall comply with all applicable Federal and Guam laws and regulations. Service Provider shall maintain all licenses and permits during all times pertinent to this contract. Service Provider is responsible for payment of all taxes under this Agreement. In the event this Agreement sets forth key personnel positions of stated experiences and training, Service Provider agrees to maintain those individuals and or positions at all times pertinent to the contract.

SECTION XXII. FORCE MAJEURE

Service Provider and/or GBHWC (other than its payment obligation) shall be excused from performance under this Agreement for any period that Service Provider or GBHWC is prevented from performing any services in whole or in part as a result of acts of God, typhoons, earthquakes, floods, epidemics, fire, quarantine restrictions, strikes, freight embargoes, unusually severe weather, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party invoking the section (each of the foregoing deemed a "Force Majeure"), provided that Service Provider or GBHWC have prudently and promptly acted to take any and all reasonably necessary preventive and/or corrective steps that are within Service Provider's or GBHWC's control to ensure that Service Provider or GBHWC can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed a breach of the Agreement. This clause shall not relieve Service Provider of responsibility for developing and implementing all prudent contingency and disaster recovery measures. Subcontractor interruptions shall not be considered a Force Majeure Event unless agreed upon by both parties. The party delayed by a Force Majeure Event shall immediately notify the other party by telephone (to be confirmed in writing, via hand delivery return receipt, within FIVE (5) days of the inception of such delay) of the occurrence of a Force Majeure Event and describe in reasonable detail the nature of the Force Majeure Event, all preventive and corrective steps taken, how it affects performance, and the anticipated duration of the inability to perform, and shall resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists. The parties shall meet to discuss and determine a revised timetable for completion of any Services delayed by a Force Majeure Event under this Agreement.

SECTION XXIII.

SEVERABILITY

The provisions of this Agreement will be deemed severable, and the unenforceability of any one or more provisions will not affect the enforceability of any other provisions. In addition, if any provision of this Agreement is declared unenforceable, the parties will substitute an enforceable provision that to the maximum extent possible in accordance with applicable law, preserves the original intentions and economic positions of the parties.

SECTION XXIV. ENFORCEMENT OF AGREEMENT

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of that party's rights under this Agreement shall be effective to waive any other rights.

SECTION XXV. NO WAIVER

No failure or delay by either party in exercising any right, power or remedy will operate at a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver will not waive any successive or other right, power or remedy the party may have under this contract.

SECTION XXVI. APPLICABLE LAW

The laws of Guam shall govern this Agreement, without giving effect to its choice of laws provisions. Venue shall be proper only in a Guam court of competent jurisdiction. By execution of this Agreement, Service Provider acknowledges and agrees to the jurisdiction of the courts of Guam over any and all lawsuits arising under or out of any term of this Agreement.

SECTION XXVII. AMENDMENT

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties.

SECTION XXVIII. MERGER

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written agreement. No prior agreement or understanding, oral or otherwise, of the parties, or their agents shall be valid or enforceable unless embodied in this Agreement.

SECTION XXIX.

INCORPORATION AND ORDER OF PRECEDENCE

The Request for Proposal GBHWC No. 08-2015 and Service Provider's proposal are incorporated by reference into this Agreement and are made part of this Agreement. In the event of any conflict among these documents, the following order or precedence shall apply:

1. Any contract amendment(s), in reverse chronological order; then
2. This Agreement itself; then
3. The Request for Proposal; then
4. Service Provider's Best and Final Offer(s), in reverse chronological order; then
5. Service Provider's proposal.

SECTION XXX.

PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNIFICATION

XXX.1. Service Provider shall defend at its own expense, the government of Guam and its agencies against any claim that any product or service provided under this Agreement infringes any patent, copyright or trademark in the United States or Guam, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a procuring agency based upon Service Provider's trade secret infringement relating to any product or service provide under this Agreement, Service Provider agrees to reimburse the government of Guam for all costs, attorneys' fees and the amount of the judgment. To qualify for such a defense and/or payment, the government of Guam shall:

- a. give Service Provider prompt written notice of any claim;
- b. allow Service Provider to control the defense or the settlement of the claim; and
- c. cooperate with Service Provider in a reasonable way to facilitate the defense or settlement of the claim.

XXX.2. If any product or service becomes, or in Service Provider's opinion is likely to become the subject of a claim of infringement, Service Provider shall at its option and expense:

- a. provide a procuring agency the right to continue to using the product or service;
- b. replace or modify the product or service so that it becomes non-infringing; or
- c. accept the return of the product or service, less the unpaid portion of the purchase price any other amounts due Service Provider. Service Provider's obligations will be void as to any product or service modified by the procuring agency to the extent such modification is the cause of the claim.

SECTION XXXI.

APPROVAL OF SERVICE PROVIDER PERSONNEL

Personnel proposed in Service Provider's written proposal to GBHWC are considered material to any services or work performed under this Agreement. No changes in personnel will be made by Service Provider without the prior written consent of GBHWC. Replacement of any of Service Provider's personnel, if approved will be with equal ability, experience and qualifications. Service Provider will be responsible for any expenses incurred in familiarizing the replacement personnel to insure their being productive to the project or program immediately upon receiving assignments. Approval of replacement personnel shall not be unreasonably withheld. GBHWC shall retain the right to request the removal of any of Service Provider's personnel at any time.

SECTION XXXII.

SURVIVAL

The sections titled Indemnification and Patent, Copyright, Trademark and Trade Secret Indemnification shall survive the expiration of this Agreement. Software licenses, leases, maintenance and other unexpired agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the dates indicated by their respective names.

SERVICE PROVIDER

GOVERNMENT OF GUAM
