

Guam Behavioral Health and Wellness Center

**790 Governor Carlos Camacho Road
Tamuning, Guam 96913**

**REQUEST FOR PROPOSAL
GBHWC RFP 2024-04
GORP: 24-Hour Warmline Peer Recovery Specialist
Services for Individuals with SUD or OUD**

AMENDMENT NO. 2024-04-A001

To: All Prospective Offerors

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

SECTION V.B Sample Contract (Form E)

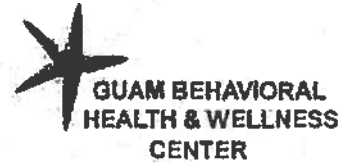
The sample contract is provided hereto and made a part of this request for proposal.

Except as provided herein, all terms and conditions of the document referenced in the solicitation number above remain unchanged and in full force and effect.



**Carissa E. Pangelinan
Acting Director
August 15, 2024**

(This amendment must be included with the proposal.)



Title: 24-Hour Warrmline Peer Recovery Specialist Services for Individual with SUD or OUD
RFP Number: GBHWC RFP 2024-04

The individual, firm, entity or organization identified below is registered as an interested party and/or "potential Offeror" to the RFP number above, and is therefore entitled to receive changes, amendments, inquiries and/or related correspondence in accordance with the Guam Procurement Regulations.

ACKNOWLEDGEMENT
Amendment No. 2024-04-A001
SAMPLE CONTRACT (FORM E)

The person below is the authorized representative or representative delegate and acknowledges receipt of the above numbered amendment(s).

Name of Organization, Firm or Individual	
Name and Signature	
Time and Date	

Instruction: This acknowledgement form must be filled out and returned to GBHWC Director's Office, faxed to (671) 649-6948, or emailed to marilyn.aflague@gbhwc.guam.gov

The amendment (s) must be included in the proposal.

CONTRACTUAL AGREEMENT
BETWEEN
GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER
AND _____

This CONTRACTUAL AGREEMENT is made between the GUAM BEHAVIORAL HEALTH AND WELLNESS CENTER, an agency of the government of Guam (hereinafter known as GBHWC or Procurement Officer), whose office address is 790 Governor Carlos G. Camacho Road, Tamuning, Guam 96913, and _____, a licensed/unlicensed Guam/off-island non-profit organization and (hereinafter known as Service Provider or contractor) whose office address is _____.

WHEREAS, the GBHWC desires to grant a Contractual Agreement (herein referred to as contract) to _____; and

WHEREAS; the GBHWC requested proposals from qualified non-profit or for-profit organizations to act as a contractor to provide _____; and

WHEREAS, the GBHWC has provided adequate public announcement of the need for such service through a request for proposal (GBHWC RFP _____) 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, the service provider has submitted its proposal and interest in providing such services; and

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

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

SECTION I.
PURPOSE

SECTION II.
SCOPE OF WORK

The Service Provider shall provide the services set forth in GBHWC RFP _____. A copy of GBHWC RFP _____ Section II Scope of Work is attached to this contract as Exhibit A.

SECTION III.
CONTRACT TERMS

- A. The subaward is for three years whereas the initial term contract shall begin upon the date that the Governor approves the contract, as signified by her execution of the contract (the "Initial Term"). After the Governor has approved the contract, the government will issue a written notice to proceed notifying the vendor when the services are to begin. The initial term of the contract shall end September 29, 2025, subject to the appropriation, allocation and availability of funds.
- B. **Renewal Term**
At the option of the government, the contract may be renewed for two one-year periods ("Renewal Term") subject to the availability of funds and satisfactory performance. Upon expiration of the Renewal Term(s), this contract shall expire, unless sooner terminated.
- C. **Federal Grant - Subaward**
This contract shall remain in effect throughout any liquidation period, extension, or no-cost extension period and any close out period for the federal grant.
- D. **Multiple Term Contract Multiple Certification of Funds.**
The Initial Term and subsequent terms of the contract are subject to the availability of funds. The funds for the first twelve (12) months (or pro-rated fiscal year if applicable) of the Initial Term of the contract are certified as part of the execution of the contract. In the event that funds are not allocated, appropriated or otherwise made available to support continuation of performance in any period time after the first twelve (12) months (or pro-rata fiscal year if applicable) the contract shall be cancelled; however, this does not affect either GBHWC's rights or Offeror's rights under any termination clause of the contract. The GBHWC shall notify the Offeror on a timely basis in writing that funds are, or are not available for the continuation of the contract for each succeeding period. In the event of the cancellation of this multi-term contract as provided above the vendor will be reimbursed its unamortized, reasonably incurred, non-recurring costs.
- There may be multiple certifications of funds by the GBHWC during any term of the contract as cleared by the Bureau of Budget and Management Research (BBMR Form CFF).

SECTION IV.
SERVICE PROVIDER'S COMPENSATION FOR SERVICES

- A. **Compensation.**
Subject to the appropriation, allocation, and availability of funds, GBHWC will compensate the Service Provider for services performed pursuant to the Scope of Work, Program Cost, and the agreed to Service Provider Negotiated and Approved Program Budget set forth in more detail in Exhibit B and Exhibit B.1 attached hereto for the term in the not-to-exceed amount of _____ DOLLARS (\$) per year. The parties agree to negotiate in good faith as to compensation for any justified increase

cost(s) in the Renewal Term.

B. Invoices and Payments

All compensation is subject to appropriation, allocation and availability of funds, upon completion of the services and receipt of any deliverables and a monthly invoice in the form agreed by the parties. If less than a month of service is provided, the GBHWC shall pro-rate the payment based on the number of days of service provided.

Each invoice should include the total amount billed from the inception of the current contract year. All invoices are subject to review and approval by the GBHWC. The acceptance and payment of any invoice shall not be deemed a waiver of any of the GBHWC's rights under the agreement. In any reporting month there exists a discrepancy in the statistical, narrative or financial reports submitted by Offeror to GBHWC, ten percent (10%) of the invoice amount shall be withheld until the discrepancy has been resolved to the satisfaction of GBHWC.

C. Payment and Release of Claims

Final payment shall be made upon final satisfactory delivery and acceptance of all services herein specified and performed. Prior to final payment and as a condition precedent thereto, Offeror shall execute and deliver to GBHWC a release, in the form provided by GBHWC of claims against GBHWC and the government of Guam arising under and by virtue of the contract.

SECTION V.

THE GOVERNMENT IS NOT LIABLE

- A. The GBHWC assumes no liability for any accident or injury that may occur to the 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 contract.
- B. The GBHWC shall not be liable to the Service Provider for any work performed by the Service Provider prior to the approval of this contract by the Governor of Guam and the Service Provider hereby expressly waives any and all claims for services performed in expectation of this contract prior to its approval by the Governor of Guam.

SECTION VI.

SPECIAL REPORTING REQUIREMENT FOR NON-PROFIT ORGANIZATIONS

- A. In the event that the Service Provider is a non-profit organization, the Service Provider shall comply with the reporting requirements set forth in P.L. 37-42 Chapter XIII Part II Section 6 and this clause, or any subsequent public report requirement law(s). In the event one of the Service Provider's subcontractors is a non-profit organization, the provisions of this clause shall also be deemed to apply to the Service Provider's subcontractor, and the Service Provider is obligated to submit its non-profit subcontractor's information in the same manner and time periods.

- B. The Service Provider shall maintain accurate financial records of all monies paid to it under this contract. The Service Provider shall provide to the GBHWC a budgetary breakdown by object category as to all services under this contract. 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 contract as part of Exhibit A and Exhibit B.
- C. The Service Provider shall provide to the 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 of the fiscal year.
- D. The Service Provider shall provide prior written notification to the GBHWC of all procurement of equipment and services of Five Thousand Dollars (\$5,000.00) or more as to its services related to this contract, or with regard to items to be invoices as part of the contract.
- E. The Service Provider shall provide access to duly authorized representative of the 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. The Service Provider shall upon written request by the 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.
- F. The Service Provider is subject to the Single Audit Rules and shall provide annually (as applicable) to GBHWC copies of its Audit Reports for all time periods covered as part of this contract.
- G. The Service Provider shall provide certified detailed inventory listing of each Fiscal Year's purchases under the contract to the 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 each subsequent year.
- H. In the event the Service Provider fails to timely provide any reports or items set forth in this section to the GBHWC after prior written reasonable notice by the GBHWC to the Service Provider and the Service Provider's failure to cure the default will subject the non-profit organization to a three per cent (3%) reduction of the contract amount or remaining contract balance.

SECTION VII.

GBHWC AGREES TO THE FOLLOWING:

- A. To maintain oversight of the Service Provider's performance in administering the _____, GBHWC will monitor, evaluate and provide guidance and direction to the Service Provider in the conduct of approved services performed under this contract.

- B. GBHWC has the responsibility to determine whether the Service Provider has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and contracts and shall monitor the activities of the Service Provider to ensure that the Service Provider has met such requirements. GBHWC may require the Service Provider to take corrective action if deficiencies are found.

SECTION VIII.

RESPONSIBILITY OF SERVICE PROVIDER

- A. The Service Provider shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. The Service Provider shall, without additional cost to the 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.
- B. The Service Provider shall devote its best efforts to the duties and responsibilities under the contract in accordance with the laws, rules, regulations and policies of the government of Guam.
- C. The GBHWC's review, approval, acceptance of, and payment of fees for services required under the contract, shall not be construed to operate as a waiver of any rights under the contract or of any cause of action arising out of the Service Provider's failure of performance, except as provided herein, and the Service Provider shall be, and remain liable, to the GBHWC for all direct costs which may be incurred by the GBHWC as result of the Service Provider's negligent performance of any of the services or work which are performed under the contract.

SECTION IX.

ACCESS TO RECORDS AND OTHER REVIEW

- A. The 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 the GBHWC, the Public Auditor, and any applicable Federal Granting Agency, Inspector General or its delegate. Each subcontract by the Service Provider pursuant to this contract shall include a provision containing the conditions of this Section.
- B. 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 shall be kept until all issues are resolved, or until the end of the regular three (3) year period, whichever is later.

- C. Records for non-expendable property acquired in whole or in part, with funds from this contract funds shall be retained for three (3) years after its final disposition.
- D. The Service Provider shall provide access to any project site(s) to the 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 to the Service Provider's work or materials furnished hereunder shall be and remain the property of the GBHWC including all publication rights and copyright interests, and may be used by the GBHWC without any additional cost to the GBHWC.

SECTION XI.
INDEMNITY

The Service Provider agrees to save and hold harmless the 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 contract, caused by the negligent act or failure of the service provider, its officers, employees, servants, or agents, or if caused by the actions of any client of the Service Provider resulting in injury or damage to persons or property during the time when the Service Provider or any of officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this contract. In the event that any action, suit or proceeding related to the services performed by the Service Provider or any officer, agent, employee, servant or subcontractor under this contract is brought against the Service Provider, the Service Provider shall as soon as practicable but no later than two (2) days after it receives notice thereof, notify the Director of the GBHWC by certified mail.

SECTION XII.
CHANGES

- (1) **Change Order.** By a written order, at any time, and without notice to surety, the Chief Procurement Officer or the head of a Purchasing Agency may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following: (A) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the territory in accordance therewith; (B) method of shipment or packing; or (C) place of delivery.

- (2) Adjustments of Price or Time for Performance. If any such change order increases or decreases the contractor'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 modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract. Failure of the parties to agree to an adjustment shall not excuse the contractor 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 contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.
- (3) Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph (1) (Change Order) of this clause, unless such period is extended by the Procurement Officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the contractor's claim unless the territory is prejudiced by the delay in notification.
- (4) Claims Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this contract.
- (5) Other Claims not Barred. In the absence of such a change order, nothing in this clause shall be deemed to restrict the contractor's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled, "Claims Based on a Procurement Officer's Actions or Omissions, Notice of Claim Clause", or for breach of contract."

SECTION XIII.
INSURANCE

The 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 contract. The Service Provider shall provide certificates of such insurance to the GBHWC when required and shall immediately report in writing to the GBHWC any insurance claims filed.

SECTION XIV.
TERMINATION

- A. Termination for Defaults: 2 GAR Div 4 §6101 (8)
 - a) Default.
If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as shall ensure its completion within the time specified in this

contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the contractor in writing of the delay or non-performance and if not cured in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The contractor shall continue performance of this contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

b) **Contractor's Duties.**

Notwithstanding termination of the contract and subject to any directions from the Procurement Officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in possession of the contractor in which the GBHWC has an interest.

c) **Compensation.**

Payment for completed supplies delivered and accepted by the territory shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and the Procurement Officer, if the parties fail to agree, the Procurement Officer shall set an amount subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. The territory may withhold from amounts due the contractor such sums as the Procurement Officer deems to be necessary to protect the territory against loss because of outstanding liens or claims of former lien holders and to reimburse the territory for the excess costs incurred in procuring similar goods and services.

d) **Excuse for Nonperformance or Delayed Performance**

Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the Procurement Officer within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the territory and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions, strikes or other labor disputes; freight embargoes; or unusually severe weather. If the

failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be deemed to be in default unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements. Upon request of the contractor, the Procurement Officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one of more or the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the territory under the clause entitled (in fixed-price contracts, "Termination" for Convenience in cost-reimbursement contracts) "Termination", (As used in this Paragraph of this clause the term "subcontractor" means subcontractor at any tier.)

- e) **Erroneous Termination for Default.**
If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the territory, be the same if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for convenience of the territory, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.
- f) **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 contract.
- g) **Non-Profit Organization Special Reporting Requirements.**
The contractor, if a non-profit organization subject to Section VI Special Reporting Requirements of Non-Profit Organizations (P.L. 37-42 Chapter XIII Part II Section 6) or current fiscal year related mandate; 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 contract; then the Procurement Officer pursuant to that section may after prior written reasonable notice to the contractor and the contractor's failure to cure the contract default, the

Procurement Officer in addition to other contractual rights and remedies under this contract, may withhold payment of Three Percent (3%) of any amounts that are invoiced under this contract by the contractor.

B. Termination for Convenience. 2 GAR Div 4 §6101 (10)

a) Termination.

The Procurement Officer may, when the interest of the territory so requires, terminate this contract in whole or in part, for the convenience of the territory. The Procurement Officer shall give written notice of the termination to the contractor specifying the part of the contract terminated and when termination becomes effective.

b) The Contractor's Obligations.

The contractor shall incur no further obligations in connection with the terminated professional services and on the date set in the notice of termination, the contractor will stop work to the extent specified. The contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the contractor to assign the contractor's rights, title, and interest under terminated orders or subcontracts to the territory. The contractor must still complete the professional services not terminated by the notice of termination and may incur obligations as are necessary to do so.

c) Right to Supplies.

The Procurement Officer may require the contractor to transfer title and deliver to the territory in the manner and to the extent directed by the Procurement Officer.

1) any completed supplies

2) such partially completed supplies and materials, parts, tools, die, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the contractor has specifically produced or specially acquired for the performance of the terminated of this contract. The contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the contractor in which the territory has an interest. If the Procurement Officer does not exercise this right, the contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam, §2706 (U.S.C.G. §2706 is quoted at the end of this §6101(10)(d) Utilization of this Section in no way implies that the

territory has breached the contract by exercise of the Termination for Convenience Clause.

d) Compensation.

- 1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by §3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Office may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- 2) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data to the extent required by §3118 (Cost or Pricing Data) or the Guam Procurement Regulation and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the territory, the proceeds of any sales of supplies and manufacturing materials under Paragraph (3) of this clause, and the contract price of the work not terminated.
- 3) Absent complete agreement under Subparagraph (b) of this paragraph, the Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall Not duplicate payments under this Subparagraph:
 - i. Contract prices for supplies or services accepted under the contract;
 - ii. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - iii. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph (2) of this clause. These costs must not include costs paid in accordance with Subparagraph (c) (ii) of this Paragraph;
 - iv. The reasonable settlement costs of the Contractor including accounting, legal, clerical and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated and settlement of subcontracts

thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the termination portion of this contract. The total sum to be paid the Contractor under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph, and the contract price of work not terminated.

- 4) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.
 - e) In the event there is any deliverables and/or reports due per this contract, the contractor and the Procurement Officer shall meet and set up the delivery dates for those items not set forth in the written notice of termination.
- C. Program Transition.
- In the event of the termination under this Section XIV. Termination, the 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. The 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 other tangible assets or items to the GBHWC.
- D. Claims Based on the Director of Public Works's or the Head of a Purchasing Agency's Action or Omissions. 2 GAR Division 4, Section 5106 (8)
- (1) Notice of Claim. If any action or omission on the part of the Director of Public Works or the head of the Purchasing Agency, or designee of such officer, requiring performance changes within the scope of the contract constitutes the basis for a claim by the contractor for additional compensation, damages, or an extension of time for completion, the contractor shall continue with performance of the contract in compliance with the directions or orders of such officials, but by so doing, the contractor shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
 - (a) the contractor shall have given written notice to the Director of Public Works, the head of the Purchasing Agency, or designee of such officer:
 - (i) prior to the commencement of the work involved, if at that time the contractor knows of the occurrence of such action or omission;

- (ii) within 30 days after the contractor knows of the occurrence of such action or omission, if the contractor did not have such knowledge prior to the commencement of the work; or
- (iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the contractor regards the act or omission as a reason which may entitle the contractor to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the contractor believes that additional compensation, damages, or an extension of time may be remedies to which the contractor is entitled; and
 - (c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.
- (2) **Limitations of Clause.** Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any territorial officers and any contractors from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.
- (3) **Adjustments of Price.** Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

E. Remedies

Any dispute arising under or out of this contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

**SECTION XV.
PRODUCT OF SERVICE-COPYRIGHT**

All materials developed or acquired by the service provider under this contract shall become the property of the GBHWC and shall be delivered to the GBHWC no later than the termination date of this contract. Nothing developed or produced, in whole or in part, by the Service Provider under this contract shall be subject of an application for copyright or other claim of ownership by or on behalf of the 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 contract, it is the intent of the GBHWC and the Service Provider that the terms of this clause are to be given precedence.

- A. **Disputes - Contractual Controversies.**
The GBHWC and the Service Provider agree to attempt resolution of all controversies which arise under, or are by virtue of, this contract through mutual contract. If the controversy is not resolved by mutual contract, then the 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 their designee shall immediately furnish a copy of the decision to the Service Provider, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt. The Authority’s decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision in the manner described below.
- B. **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 the Service Provider may proceed as though the Director of the GBHWC, or his designee had issued a decision adverse to the Service Provider.
- C. **Disputes – Money Owed By or to the GBHWC**
For disputes involving money owed by or to GBHWC under this Contract, the Service Provider shall file an appeal of GBHWC’s decision on a dispute in accordance with the Government Claims Act, 5 GCA § 6101 et. seq., by filing a government claim with the Office of the Attorney General no later than eighteen (18) months after the decision on a dispute is rendered by GBHWC or from the date when a decision should have been rendered.
- D. **Disputes – All Other Claims Against GBHWC.**
For all other disputes arising under this Contract, the Contractor shall file an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty (60) days of GBHWC’s decision on the dispute or from the date the decision should have been made.
- E. **Exhaustion of Administrative Remedies.**
The Service Provider shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.
- F. **Performance of Contract Pending Final Resolution by the Court.**
The Service Provider shall comply with the GBHWC’s decision and proceed diligently with performance of this contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this contract, except where the Service

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

SECTION XVII.
MANDATORY REPRESENTATIONS BY SERVICE PROVIDER

A. Ethical Standards.

With respect to this procurement and any other contract that the Service Provider may have, or wish to enter into, with the GBHWC, the Service Provider represents that it has not knowingly influenced, and promises that it shall 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.

B. Prohibition Against Gratuities and Kickbacks.

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

C. Prohibition Against Contingent Fees.

The Service Provider represents that he has not retained any person or agency upon an contract 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.

D. 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;

The Service Provider warrants (1) that no person providing services on behalf of the 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 the 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 shall 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 the Service Provider is providing services that involve direct contact with the GBHWC consumers, customers or potential eligible receivers of the 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".

E. Wage and Benefit Compliance – Service Providers Providing Services.

The 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 the 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. The 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 contract is awarded to the 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 contract.

The 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. The Service Provider shall pay a minimum of ten (10) paid holidays per annum per employee.

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

The Service Provider agrees that any violation of the 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 the GBHWC may have under this procurement, in the event there is a violation in the process set forth in the preceding subsection, the Service Provider may be placed on probationary status by the Director of GBHWC, for a period of one (1) year. During the probationary status, the Service Provider shall not be awarded any contract by any instrumentality of the government of Guam. The 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.

The 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 and attached hereto as Exhibit C and Exhibit C.1.

The Service Provider agrees to provide upon written request by the 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 the GBHWC, the Service Provider shall submit source documents as to those individuals that provide direct services in part or whole under this contract and its payments to them of such wages and benefits.

F. Privacy Rights.

The Service Provider will comply with all Federal and Guam laws and regulations as to the privacy rights of individuals and as to any records and information of individuals providing services under this contract, including but not limited to the following:

1. **Health Insurance Portability and Accountability (HIPAA)**
The Service Provider will comply with the Health Insurance Portability and Accountability Act (HIPAA of 1996, 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.
2. **Client Confidentiality.** The Service provider will ensure information obtained directly or indirectly from a recipient client under this contract will 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.

G. Technology Access for Blind or Visually Impaired.

The 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.

H. Equal Opportunity Compliance.

The 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, the 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 contract. If the Service Provider is found not to be in compliance with these requirements during the life of this contract, the Service Provider agrees to take appropriate steps to correct these deficiencies.

I. **Records Discrimination Against Status Offenders Prohibited.**

The 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.

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

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

K. **Drug and Smoke-Free Workplace.**

The 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].

L. **Social Security Number Confidentiality Act.**

The 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.

M. **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.**

The 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 the Service Provider is unable to employ due to the lack of individuals with disabilities who can work, the 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 the Service Provider and is subject to review and inspection by the GBHWC.

N. **Service Provider's signed and dated OAG Procurement Form 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest, is attached hereto and incorporated herein as Exhibit D.**

Pursuant to 5 G.C.A. § 5233, P.L. 36-13 (effective 04/09/2021), the representations, affirmations and certifications that the Service Provider has made, as part Form AG 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest, and all previous sworn disclosure by the Service Provider in GBHWC RFP _____, are incorporated herein by reference. Pursuant to § 5233 (g) the Service Provider shall promptly make any disclosures not previously made, required by § 5233 (c), (d) and (e), and update changes in the identities or other required information, interests, or conflicts of the person required to be disclosed as part of Form AG 002 Affidavit Disclosing Ownership, Influence, Commissions and Conflicts of Interest in GBHWC RFP _____.

The disclosures made under 5 GCA §5233 shall remain in the public portion of the procurement record.

The Service Provider acknowledges that failure to comply promptly and fully with 5 GCA § 5233 shall constitute a material breach of this contract

SECTION XVIII.

ASSIGNMENT, SUCCESSORS AND ASSIGNS

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

SECTION XIX.

SUBCONTRACTING

The service provider shall not subcontract any portion of the services to be performed under this contract without the prior written approval of the GBHWC.

SECTION XX.

STATUS OF SERVICE PROVIDER

The Service Provider and its agents and employees are independent contractors performing professional services for the GBHWC and are not employees of the GBHWC. The Service Provider and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of the GBHWC vehicles, or any other benefit afforded to employees of the GBHWC as a result of this contract. The Service Provider acknowledges that all sums received hereunder are reportable by the Service Provider for tax purposes, including without limitation, self-employment and business income tax. The Service Provider agrees not to purport to bind the

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

A non-resident person without a valid Guam business license residing outside of Guam shall be subject to a withholding assessment, the equivalent of the Guam business privilege tax (BPT), which shall be the equal to four percent (4% or current rate) of the total value of a contract awarded by all government of Guam contracts for professional services as a cost of doing business with the government of Guam. See P.L. 33-166 effective June 20, 2017 codified at 11 G.C.A., Chapter 71, Section 7114.

SECTION XXII.
FORCE MAJEURE

The Service Provider and/or the GBHWC (other than its payment obligation) shall be excused from performance under this contract for any period that the Service Provider or the 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 the Service Provider or the GBHWC have prudently and promptly acted to take any and all reasonably necessary preventive and/or corrective steps that are within the Service Provider's or the GBHWC's control to ensure that the Service Provider or the GBHWC can promptly perform. Such non-performance (collectively, a Force Majeure Event) shall not be deemed a breach of the contract. This clause shall not relieve the 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 contract.

SECTION XXIII.
SEVERABILITY

The provisions of the contract shall be deemed severable, and the unenforceability of any one or more provisions shall not affect the enforceability of any other provisions. In addition, if any provision of this contract is declared unenforceable, the parties shall 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 CONTRACT

A party's failure to require strict performance of any provision of this contract 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 contract 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 shall operate at a waiver of such right, power or remedy, and no waiver shall be effective unless it is in writing and signed by the waiving party. If either party waives any right, power or remedy, such waiver shall 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 contract, 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 contract, the 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 contract.

SECTION XXVII.
AMENDMENT

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

SECTION XXVIII.
MERGER

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

SECTION XXIX.
INCORPORATION AND ORDER OF PRECEDENCE

The Federal Grant terms and conditions, GBHWC RFP ____ and the service provider's proposal (inclusive of all signed forms) are incorporated by reference into this contract and are made part of this contract. 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.
2. This contract.
3. Notice of Prime Grant Award No. H79TI085788
4. The Request for Proposal.
5. The Service Provider's Best and Final Offer(s), in reverse chronological order.
6. the Service Provider's proposal.

SECTION XXX.
PATENT, COPYRIGHT, TRADEMARK AND TRADE SECRET INDEMNIFICATION

- A. The 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 contract 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 the service provider's trade secret infringement relating to any product or service provide under this contract, the 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:
1. Give the Service Provider prompt written notice of any claim.
 2. Allow the Service Provider to control the defense or the settlement of the claim.
 3. Cooperate with the Service Provider in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any product or service becomes, or in the Service Provider's opinion is likely to become the subject of a claim of infringement, the Service Provider shall at its option and expense:
1. Provide a procuring agency with the right to continue to use the product or service.
 2. Replace or modify the product or service so that it becomes non-infringing.

3. Accept the return of the product or service, less the unpaid portion of the purchase price any other amounts due the Service Provider. The Service Provider's obligations shall 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 the Service Provider's written proposal to the GBHWC are considered material to any services or work performed under this contract. No changes in personnel shall be made by the Service Provider without the prior written consent of the GBHWC. Replacement of any of the service provider's personnel, if approved shall be with equal ability, experience and qualifications. The Service Provider shall 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. The GBHWC shall retain the right to request the removal of any of the Service Provider's personnel at any time. A penalty of ten percent (10%) of the monthly invoice amount shall be imposed for every month the service provider does not have the staff.

SECTION XXXII.

SURVIVAL

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

SECTION XXXIII.

PROPRIETARY INFORMATION

Proprietary information for the purpose of this contract is information relating to a party's research, development, trade secrets, business affairs, internal operations and management procedures and those of its customers, clients or affiliates, but does not include information lawfully obtained by third parties, which is in the public domain, or which is developed independently.

Neither party shall use or disclose directly or indirectly without prior written authorization any proprietary information concerning the other party obtained as a result of this contract. Any proprietary information removed from GBHWC's site by Service Provider in the course of providing services under this contract will be accorded at least the same precautions as are employed by Service Provider for similar information in the course of its own business.

SECTION XXXIV.
CONFLICT OF INTEREST

In keeping with 2 CFR §200.112 Service Provider agrees as follows:

During the term of this contract, the Service Provider will not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the Service Provider fully performing its obligations under this contract.

Additionally, the Service Provider acknowledges that, in governmental contracting, even the appearance of a conflict of interest is harmful to the interests of GBHWC.

Thus, the Service Provider agrees to refrain from any practices, activities or relationships which could reasonably be considered to be in conflict with the Service Provider's fully performing its obligations to GBHWC under the terms of this contract, without the prior written approval of GBHWC.

In the event that the Service Provider is uncertain whether the appearance of a conflict of interest may reasonably exist, the Service Provider shall submit to GBHWC a full disclosure statement setting forth the relevant details for GBHWC's consideration and direction. Failure to promptly submit a disclosure statement or to follow GBHWC's direction in regard to the apparent conflict will be grounds for termination of the contract.

Further, the Service Provider will maintain a written code of standards governing the performance of its agent(s) engaged in the award and administration of contracts.

Neither the Service Provider nor its agent(s) shall participate in the selection, or in the award or administration of a contract or subcontract supported by Federal or Local funds under this contract, if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

The employee, officer or agent: Any member of the employee's immediate family (which includes a spouse, children, parents, brothers and sisters, grandparents and grandchildren, mothers-in-law and fathers-in-law, brothers-in-law and sisters-in-law, daughters-in-law and sons-in-law. Stepsiblings, stepchildren and stepparents shall also be regarded as immediate family. 5 GCA Ch 5 Article 11 Section 5610 (g) Immediate Family (P.L. 31-016)).

The employee's partner, or an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

Neither the Service Provider nor its agent(s) will solicit nor accept gratuities, favors, or anything of monetary value from Service Provider's potential subcontractors, or parties to sub-contracts.

The Service Provider will comply with Ethics in Public Contracting 5 GCA Chapter 5 Article 11 Ethics in Public Cing and 2 GAR Division 4 Chapter 11.

SECTION XXXV
TERMINATION FOR FINANCIAL EXIGENCY

The government of Guam shall have the right to terminate this contract for financial exigency by giving the Service Provider at least thirty (30) days prior written notice. For the purpose of this provision, a financial exigency shall be a determination made by the head of the purchasing agency based on the Guam legislature failure to fund this contract or in the event of Federal funds, the Federal government fails to fund the government of Guam for this program. If notice of such termination is so given, this contract shall terminate on the expiration of the time period specified in the notice, and the liability of the parties hereunder for further performance of the terms of this contract shall hereupon cease, but the parties shall not be released from the duty to perform their obligations up to the date of termination. The Service Provider may submit a claim in the same manner as is set forth for the termination for convenience claim.

SECTION XXXVI
PROGRAM FRAUD OR FALSE OR FRAUDULENT STATEMENTS
OR RELATED ACTS

The Service Provider acknowledges that 5 GCA, Chapter 37 False Claims and Whistleblower Act applies to Service's actions pertaining to this contract. P.L. 116-34 Chapter III § 20 (lapsed into law Aug 24, 2018, codified at 5 GCA Chapter 37).

SECTION XXXVII
COMPLIANCE WITH THE FEDERAL AWARDEE PERFORMANCE
AND INTEGRITY INFORMATION SYSTEM

§ 200.113 Mandatory disclosures. (Uniform Grant)- Federal Awardee Performance and Integrity Information System (FAPIS)

(If applicable). The Service Provider shall comply with the non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in Appendix XII to this part are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.) [85 FR 49539, Aug. 13, 2020] Appendix XII to Part 200 - Award Term and Condition for Recipient Integrity and Performance Matters

A. Reporting of Matters Related to Recipient Integrity and Performance *(if applicable)*

1. General Reporting Requirement

If the total value of your currently active grants, cooperative contracts, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made

available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a. Is in connection with the award or performance of a grant, cooperative contract, or procurement contract from the Federal Government.
- b. Reached its final disposition during the most recent five-year period.
- c. Is one of the following:
 - 1) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition.
 - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.
 - 3) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages more than \$100,000.
 - 4) Any other criminal, civil, or administrative proceeding if:
 - i. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition.
 - ii. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part.
 - iii. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures (if applicable)

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative contract awards with a cumulative total value greater than \$10,000,000 must disclose semi-annually any information about the criminal, civil, and administrative proceedings.

5. Definitions

For purposes of this award term and condition:

- a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- c. Total value of currently active grants, cooperative contracts, and procurement contracts includes:
 - 1) Only the Federal share of the funding under any Federal award with a recipient cost share or match.
 - 2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

B. [Reserved] [80 FR 43310, July 22, 2015, as amended at 85 FR 49582, Aug. 13, 2020.]

SECTION XXXVIII
PRICE ADJUSTMENT CLAUSE

2 GAR Div Sec 6101 (6)

- (a) Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this contract shall be made in one or more of the following ways:
 - (i) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;

- (ii) by unit prices specified in the contract or subsequently agreed upon;
 - (iii) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
 - (iv) in such other manner as the parties may mutually agree; or
 - (v) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.
- (b) **Submission of Cost or Pricing Data.** The contractor shall provide cost or pricing data for any price adjustments subject to the provisions of §3118 (Cost or Pricing Data) of the Guam Procurement Regulations.

(Signature Page Follows)