



GWA RESOLUTION NO. 23-FY2024

**RELATIVE TO APPROVAL OF THE YEAR 4 & 5 TASK ORDERS OF THE WATER
LOSS CONTROL PROFESSIONAL SERVICES CONTRACT**

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities (“CCU”) has plenary authority over financial, contractual, and policy matters relative to the Guam Waterworks Authority (“GWA”); and

WHEREAS, the Guam Waterworks Authority (“GWA”) is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, GWA currently has a number of critical projects as part of GWA’s Capital Improvement Plan, including the Water Loss Control Program, that investigates and analyzes our system’s infrastructure, identifies old and persistently leaking waterlines island-wide, and coordinates the development of district metered areas (DMA’s) in order to manage non-revenue water loss; and

WHEREAS, under the General Manager’s Authority, GWA entered into contract with E Source, formerly known as “Water Systems Optimization, Inc.” (WSO), on July 8th, 2021, for a contract term of three (3) years with two (2) additional one (1) year terms subject to the consent of both parties, in the amount of Four Hundred and Two Thousand Seven Hundred and Seventy-Four Dollars (\$402,774.00) (Exhibit A- Agreement); and

WHEREAS, GWA extended E Source’s services for the Water Loss Control Program- Island-wide Development & District Metered Area Implementation Plan in a Year 2 Task Order on August 26th, 2022, which increased the contract by Three Hundred Eighty-Two Thousand Six Hundred and Eighty-Nine Dollars (\$382,689.00) (See Exhibit B- Task Order No. 2); and

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1 **WHEREAS**, GWA further extended E Source's services for the Water Loss Control
2 Program- Island-wide Development & District Metered Area Implementation Plan in a Year 3
3 Task Order on July 25th, 2023, which increased the contract by Four Hundred Twenty-Two
4 Thousand Six Hundred and Eighty-Nine Dollars (\$422,289.00) (See Exhibit C- Task Order No.
5 3); and

6
7 **WHEREAS**, GWA intends to exercise the two (2) additional one-year terms (Year 4 and
8 Year 5) and continue the Water Loss Control Program as part of GWA's efforts to reduce non-
9 revenue water and make improvements to the system where service delivery has been below
10 standard; and

11
12 **WHEREAS**, GWA Management is seeking approval to increase the authorized funding
13 by Four Hundred One Thousand Seven Hundred Twenty-Four Dollars (\$401,724.00) for the
14 execution of a Year 4 Task Order (Exhibit D – Task Order Proposal Year Four) and an additional
15 Four Hundred Forty-One Thousand Eight Hundred Ninety-Six Dollars and Forty Cents
16 (\$441,896.40) for the execution of the anticipated Year 5 Task Order; and

17
18 **WHEREAS**, the funding source for the project will be from GWA Operations and
19 Maintenance (O&M) budget and Internally Funded CIP;

20
21 **WHEREAS**, GWA management further seeks CCU approval to petition the PUC for the
22 approval of amending the contract for the Water Loss Control Program with the Year 4 & 5 Task
23 Order as indicated above.

24
25 **NOW BE IT THEREFORE RESOLVED**, the Consolidated Commission on Utilities
26 does hereby approve the following:

- 27 1. The recitals set forth above hereby constitute the findings of the CCU.
28 2. The CCU hereby approves the funding of Four Hundred One Thousand Seven
29 Hundred Twenty-Four Dollars (\$401,724.00) plus an additional Four Hundred
30 Forty-One Thousand Eight Hundred Ninety-Six Dollars and Forty Cents
31 (\$441,896.40) (Exhibit D) to bring the total authorized funding to Two

Million Fifty-One Thousand Three Hundred Seventy-Two Dollars and Forty Cents (\$2,051,372.40) to enable the execution of the Year 4 & 5 Task Orders.

3. The CCU hereby authorizes management of GWA to pursue PUC approval for a contract exceeding One Million Dollars (\$1,000,000) that will have amendment(s) funded by GWA Operations and Maintenance Budget and Internally Funded CIP Budget, as may be required under the PUC's Contract Review Protocol.

RESOLVED, that the Chairman certified, and the Board Secretary attests to the adoption of this Resolution.

DULY AND REGULARLY ADOPTED, this 28th day of May 2024.

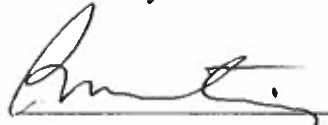
Certified by:



JOSEPH T. DUENAS

Chairperson

Attested by:



PEDRO ROY MARTINEZ

Secretary

SECRETARY'S CERTIFICATE

I, Pedro Roy Martinez, Board Secretary of the Consolidated Commission on Utilities as evidenced by my signature above do hereby certify as follows:

The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular meeting by the members of the Guam Consolidated Commission on Utilities, duly and legally held at a place properly noticed and advertised at which meeting a quorum was present and the members who were present voted as follows:

AYES:

5

NAYS:

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ABSENT:

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ABSTAIN:

0



AGREEMENT
BETWEEN OWNER AND PROGRAM MANAGER

THIS IS AN AGREEMENT effective as of _____ “Effective Date” between
_____ Guam Waterworks Authority (“Owner”) and
_____ Water Systems Optimization, Inc (“Program Manager”).

Owner has begun a program of **Professional Utility Consulting Services for Water Loss Control** (“Program”). Owner hereby engages Program Manager to assist Owner with the management of the Program as set forth in this Agreement. This Agreement sets forth the general terms and conditions that shall govern the relationships and performance of Owner and Program Manager with respect to the Program.

Owner and Program Manager agree as follows:

ARTICLE 1 – SERVICES OF PROGRAM MANAGER

1.01 Scope

- A. The Basic Services to be provided by Program Manager include those services set forth in Exhibit A “Program Manager’s Services.”
- B. If Owner authorizes Program Manager to do so, then Program Manager shall provide specific additional services within the scope set forth in Exhibit A, paragraph A.1.02. Owner’s authorization of any such Additional Services shall be given in a Task Order, which shall include the tasks to be performed and the deliverables to be provided. A sample Task Order form is included for reference as Appendix 1 to Exhibit A.
- C. If Owner and Program Manager mutually agree, Program Manager shall provide other further services related to the Program. Any such mutual agreement shall be set forth in a written amendment to this Agreement, which shall specify the scope of services to be provided, the compensation to be paid, the time for performance, and any other terms applicable.

ARTICLE 2 – OWNER’S RESPONSIBILITIES

2.01 General

- A. Owner shall:
 - 1. Pay Program Manager as set forth in Exhibit C.
 - 2. As identified and requested by the Program Manager, provide Program Manager with all criteria and full information as to Owner’s requirements for the Program and for each Specific Project, including management and financial objectives and constraints, performance requirements, program flexibility, expandability, and any budgetary limitations; furnish copies of all regulatory requirements, indenture covenants and other standards which Owner will require to be met; and furnish

copies of any standard contract forms, conditions, and related documents applicable to the Program.

3. As identified and requested by the Program Manager, furnish to Program Manager any other relevant information in Owner's possession, including studies, financial data, analyses, operating results, financial reports, and data relative to previous financings and capital improvement programs.
4. Arrange for safe access to and make all provisions for Program Manager to enter upon public and private property as required for Program Manager to perform services.
5. Provide reasonable assistance to Program Manager in securing the release of documents and information held by private entities and by public agencies and like bodies as needed in the course of the Program.
6. Review all proposals, alternate solutions, studies, reports, financial models, and other documents presented by Program Manager (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
7. Advise Program Manager of the identity and scope of services of any independent consultants, contractors, or engineers employed by Owner to perform or furnish services in regard to the Program or a Specific Project, including, but not limited to, cost of service studies, project or program enhancement studies, demand forecasting, and alternative financing studies, and define and set forth the duties, responsibilities, and limitations of authority of such other parties and the relation thereof to the duties, responsibilities, and authority of Program Manager.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 Commencement

- A. Program Manager shall begin rendering services as of the Effective Date of the Agreement.

3.02 Time for Completion

- A. The general schedule of Owner's Program is as set forth in Exhibit A. Program Manager shall submit to Owner, for its approval, a schedule stating the times for performing services or providing deliverables. If no time is so stated for a particular task, or set forth in a Task Order, then Program Manager will perform services and provide deliverables within a reasonable time.
- B. If, through no fault of Program Manager, such periods of time or dates are changed, or the orderly and continuous progress of Program Manager's services is impaired, or Program Manager's services are delayed or suspended, then the time for completion of Program Manager's services, and the rates and amounts of Program Manager's compensation, shall be adjusted equitably.

- C. If Owner authorizes changes in the scope, extent, or character of the Program, then the time for completion of Program Manager's services, and the rates and amounts of Program Manager's compensation, shall be adjusted equitably.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Program Manager's performance of its services.
- E. If Program Manager fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled to the recovery of direct damages resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices.* Program Manager shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Program Manager shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. *Application to Interest and Principal.* Payment will be credited first to any interest owed to Program Manager and then to principal.
- B. *Failure to Pay.* If Owner fails to make any payment due Program Manager for services and expenses within 30 days after receipt of Program Manager's invoice, then:
 - 1. amounts due Program Manager will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and
 - 2. Program Manager may, after giving seven days written notice to Owner, suspend services under this Agreement until Owner has paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Program Manager for any such suspension.
- C. *Disputed Invoices.* If Owner contests an invoice, Owner may withhold only that portion so contested, and must pay the undisputed portion.
- D. *Legislative Actions.* If after the Effective Date of the Agreement any governmental entity takes a legislative action that imposes taxes, fees, or charges on Program Manager's services or compensation under this Agreement, then the Program Manager may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall pay such invoiced new taxes, fees, and charges; such payment shall be in addition to the compensation to which Program Manager is entitled under the terms of Exhibit C.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 *Standards of Performance*

- A. The standard of care for all professional services performed or furnished by Program Manager under this Agreement will be the care and skill ordinarily used by members of the subject profession providing similar services under similar circumstances. Program Manager and the Program Subcontractors shall comply with applicable professional licensing requirements. Program Manager makes no warranties, express or implied, under this Agreement or otherwise, in connection with Program Manager's services.
- B. Owner shall not be responsible for discovering deficiencies in the technical accuracy of Program Manager's services. Program Manager shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. Program Manager may employ such Program Subcontractors as Program Manager deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Owner. Program Manager shall be responsible to Owner for the acts and omissions of any such Program Subcontractors in performing or furnishing services under this Agreement.
- D. Program Manager and Owner shall comply with applicable Laws and Regulations and Owner-mandated standards. This Agreement is based on such requirements as of the Agreement's Effective Date. Changes to these requirements after the Effective Date may be the basis for modifications to Owner's responsibilities or to Program Manager's scope of services, times of performance, and compensation.
- E. Owner shall be responsible for, and Program Manager may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Program Manager pursuant to this Agreement. Program Manager may use such requirements, reports, data, and information in performing or furnishing services under this Agreement.
- F. If Program Manager provides services during the performance of a Specific Project by Owner's contractor, Program Manager shall not supervise, direct, or have control over a Contractor's work, nor shall Program Manager have authority over or responsibility for the means, methods, techniques, sequences, or procedures of performance selected or used by a Contractor, for safety precautions and programs incident to a Contractor's work in progress, or for any failure of a Contractor to comply with Laws and Regulations applicable to a Contractor's furnishing and performing the work.
- G. Program Manager neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the work in accordance with the Contract Documents.
- H. Program Manager shall not be responsible for the acts or omissions of any Contractor, or of any of a Contractor's subcontractors, suppliers, agents, or employees or any other persons on such Project (except Program Manager's own employees and the Program

Subcontractors) or otherwise furnishing or performing any of a Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by Owner to a Contractor without consultation and advice of Program Manager.

5.02 *Authorized Project Representatives*

- A. Program Manager and Owner shall designate in writing specific individuals to act as Program Manager's and Owner's representatives with respect to the various services to be performed or furnished by Program Manager and the responsibilities of Owner. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to specified services on behalf of each respective party.

5.03 *Use of Documents*

- A. Only when specified and mutually agreed in a Task Order by both Owner and Program Manager, Documents prepared under such Task Order are instruments of service in respect to this Program, and Program Manager shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Program Manager) whether or not the Program or the Specific Project is completed. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Program Manager or one of its Program Subcontractors.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.
- E. For all Documents subject to the provisions of Paragraph A in this section, Owner may make and retain copies of Documents for information and reference in connection with use on the Program or a Specific Project by Owner. Program Manager grants Owner a license to use the Documents for the specific purpose or on the Specific Project for which the Documents are intended, extensions of the Specific Project, and other projects of Owner, subject to the following limitations: (1) Owner acknowledges that such Documents are not intended or represented to be suitable for use, on the Specific Project or otherwise, unless

completed by Program Manager, or for use or reuse by Owner or others on extensions of the Specific Project or on any other project without written verification or adaptation by Program Manager; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Program Manager, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Program Manager or to Program Subcontractors; (3) Owner shall indemnify and hold harmless Program Manager and the Program Manager Subcontractors from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Program Manager; (4) such limited license to Owner shall not create any rights in third parties.

- F. If Program Manager at Owner's request verifies or adapts the Documents for extensions of a Specific Project or for any other project, then Owner shall compensate Program Manager at rates or in an amount to be agreed upon by Owner and Program Manager.

5.04 *Insurance*

- A. Program Manager shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Owner shall be listed as an additional insured on any general liability or property insurance policies under Exhibit G.
- B. Owner shall procure and maintain insurance as set forth in Exhibit G. Owner shall cause Program Manager and all Program Subcontractors to be listed as additional insureds on any general liability or property insurance policies carried by Owner which are applicable to the Program or a Specific Project.
- C. Owner shall require Contractors to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause Program Manager and all Program Subcontractors to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for a Specific Project.
- D. Owner and Program Manager shall each deliver to the other certificates of insurance verifying the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Program Manager's services and at renewals thereafter during the life of this Agreement.
- E. All policies of property insurance relating to the Program or a Specific Project shall contain provisions to the effect that Program Manager's and the Program Subcontractors' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, Owner may request that Program Manager or its Program Subcontractors, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Program Manager shall obtain and shall require the Program Subcontractors to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be amended to incorporate these requirements.

5.05 *Suspension and Termination*

A. *Suspension.*

1. By Owner: Owner may suspend the Program or a Specific Project upon seven days written notice to Program Manager.
2. By Program Manager: If Program Manager's services are substantially delayed through no fault of Program Manager, Program Manager may, after giving seven days written notice to Owner, suspend services under this Agreement.

B. *Termination.* The obligation to provide further services under this Agreement may be terminated:

1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Program Manager:
 - (a) upon seven days written notice if Owner demands that Program Manager furnish or perform services contrary to Program Manager's responsibilities as a licensed professional; or
 - (b) upon seven days written notice if the Program Manager's services for the Program are delayed or suspended for more than 90 days for reasons beyond Program Manager's control.
 - (c) Program Manager shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate under paragraph 5.06.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
2. For convenience, by Owner only, effective upon Program Manager's receipt of notice from Owner.

C. *Effective Date of Termination.* The terminating party under paragraph 5.06.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Program Manager to demobilize personnel and equipment from all Projects, to complete

tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Program and Specific Project materials in orderly files.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 5.06, Program Manager will be entitled to invoice Owner and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's sole risk, subject to the provisions of paragraph 5.04.E.
2. In the event of termination by Owner for convenience or by Program Manager for cause, Program Manager, in addition to invoicing for those items identified in paragraph 5.06.D.1, shall be entitled to invoice Owner and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Program Subcontractors, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.

5.06 *Controlling Law*

- A. This Agreement is to be governed by the law of the state or territory in which the principal office of the Owner is located, unless the law of the state where the subject services are being performed requires that the law of that state be applied.

5.07 *Successors, Assigns, and Beneficiaries*

- A. Owner and Program Manager each is hereby bound and the partners, successors, executors, administrators and legal representatives of Owner and Program Manager (and to the extent permitted by paragraph 5.08.B the assigns of Owner and Program Manager) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither Owner nor Program Manager may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Program Manager to any Contractor, Contractor's

subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Program Manager and not for the benefit of any other party. The Owner agrees that the substance of the provisions of this paragraph 5.08.C shall appear in any Contract Documents prepared for any Specific Project under this Agreement.

5.08 *Dispute Resolution*

- A. Owner and Program Manager agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Exhibit H or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation under paragraph 5.09.A, then either or both may invoke the procedures of Exhibit H. If Exhibit H is not included, or if no dispute resolution method is specified in Exhibit H, then the parties may exercise their rights under law.

5.09 *Indemnification and Mutual Waiver*

- A. *Indemnification by Program Manager.* To the fullest extent permitted by law, Program Manager shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents, consultants, and employees from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Program, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Program Manager or Program Manager's officers, directors, partners, employees, or Program Subcontractors.
- B. *Indemnification by Owner.* To the fullest extent permitted by law, Owner shall indemnify and hold harmless Program Manager, Program Manager's officers, directors, partners, agents, employees, and Program Subcontractors from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Program, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property (other than the work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Owner or Owner's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Owner with respect to this Agreement or to the Program.
- C. *Percentage Share of Negligence.* To the fullest extent permitted by law, a party's total liability to the other party and anyone claiming by, through, or under the other party for

any cost, loss, or damages caused in part by the negligence of the party and in part by the negligence of the other party or any other negligent entity or individual, shall not exceed the percentage share that the party's negligence bears to the total negligence of Owner, Program Manager, and all other negligent entities and individuals.

- D. *Mutual Waiver.* To the fullest extent permitted by law, Owner and Program Manager waive against each other, and the other's employees, officers, directors, agents, insurers, partners, subcontractors, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Program.

5.10 *Miscellaneous Provisions*

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Program Manager, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement and relating to a Specific Project shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of substantial completion of the Specific Project under which the claim arises.

5.11 *Survival*

- A. All express representations, indemnifications, limitations of liability, and other obligations included in this Agreement will survive its completion or termination for any reason.

5.12 *Severability*

- A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Program Manager, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable

provision that comes as close as possible to expressing the intention of the stricken provision.

5.13 *Waiver*

- A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.14 *Headings*

- A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 6 – DEFINITIONS

6.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto and any Task Order) and printed with initial capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:
 - 1. *Additional Services* – Services which are not included in Basic Services to be performed for or furnished to Owner by Program Manager.
 - 2. *Agreement* – This “Model Form of Agreement between Owner and Program Manager,” including those Exhibits listed in Article 7.
 - 3. *Basic Services* – Specified services to be performed for or furnished to Owner by Program Manager in accordance with this Agreement.
 - 4. *Contract* – The entire and integrated written agreement between Owner and a Contractor concerning a Specific Project under the Program.
 - 5. *Contract Documents* – Documents that establish the rights and obligations of Owner and Contractor under a Contract for a Specific Project and include the agreement between Owner and Contractor, addenda (which pertain to the Contract Documents), a contractor’s bid (including documentation accompanying the bid and any post-bid documentation submitted prior to the notice of award) when attached as an exhibit to the agreement, the notice to proceed, the bonds, appropriate certifications, the general conditions, the supplementary conditions, the specifications and the scope of work as the same are more specifically identified in the agreement, together with all written amendments, change orders, work change directives, and Program Manager’s written interpretations and clarifications issued on or after the effective date of the agreement.
 - 6. *Contractor* – An individual or entity with whom Owner enters into a Contract for a Specific Project.

7. *Documents* – Data, reports, analyses, specifications, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Program Manager to Owner pursuant to this Agreement.
8. *Effective Date of the Agreement* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
9. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
10. *Program Subcontractors* – Individuals or entities having a contract with Program Manager to furnish services, materials, or equipment with respect to the Program or a Specific Project as Program Manager's independent professional associates, consultants, subcontractors, suppliers, or vendors.
11. *Reimbursable Expenses* – The expenses incurred directly by Program Manager in connection with the performing or furnishing of Basic and Additional Services for the Specific Project.
12. *Site* – Lands or areas subject to investigation, use, improvement, or development under the Program; including but not limited to specific locations at which construction is to occur; and including any lands indicated in any Contract Documents for a Specific Project as being furnished by Owner upon which construction is to be performed; rights-of-way and easements for access to construction locations; and such other lands or facilities furnished by Owner which are designated for the use of Program Manager or a Contractor.
13. *Specific Project* – A project carried out under the Program.
14. *Task Order* – A document issued by Owner, including amendments if any, stating the scope of services, times for performance of services, and other relevant information for specified Additional Services to be provided by Program Manager.

ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.01 Exhibits

Included? (Yes or No)	Exhibit Letter	Exhibit Title	No. of Pages
	A	Program Manager's Services	
	Appendix 1 to Exhibit A	Task Order	
	B	[Reserved]	
	C	[DELETED]	
	D	[Reserved]	

	E	[Reserved]	
	F	[Reserved]	
	G	Insurance	
	H	Dispute Resolution	
	I	[Reserved]	
	J	[DELETED]	
	K	[DELETED]	

7.02 *Total Agreement*

- A. This Agreement (consisting of pages 1 to __ inclusive, together with the Exhibits identified as included above) constitutes the entire agreement between Owner and Program Manager and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

The Effective Date of this Agreement is July 8, 2021

Owner: Guam Waterworks Authority

Program Manager: Water Systems Optimization, Inc.

By: MIGUEL C. BORDALLO, P.E.

By: Reinhard Sturm

Title: General Manager

Title: CEO and President

Date Signed: 7.8.2021

Date Signed:

Professional License or Firm's Certificate No.
(if required by state law):

State of:

Address for giving notices:

Address for giving notices:

Gloria B. Nelson Public Service Building

1410 Donelson Pike, A1

688 Route 15

Nashville, TN 37217

Mangilao, Guam 96913

Designated Representative:

Designated Representative:

Reinhard Sturm

Title:

Title: CEO & President

Phone Number:

Phone Number: 786 877 5752

Facsimile Number:

Facsimile Number:

E-Mail Address:

E-Mail Address: reinhard.sturm@wso.us

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CERTIFIED FUNDS AVAILABLE:

APPROVED AS TO FORM:

By: _____

zmc TALING M. TAITANO, CPA, CGFM, CGMA
GWA Chief Financial Officer

By: _____

KELLY O. CLARK
GWA General Counsel

Date: _____

Date: _____

7/1/21

Contract Amount: \$ 402,774.00

Amount Certified: \$ 402,774.00

Funding Source: Internally Funded CIP

This is **EXHIBIT A**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Program Manager** dated _____, _____.

Program Manager's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Program Manager shall provide Basic and Additional Services as set forth in the Scope of Work.

This is Task Order No. _____,
consisting of _____
pages.

Task Order

	Preston Project Director Hours (\$229/hr)	Reinhard Sturm Project Advisor Hours (\$229/hr)	Project Manager Hours (\$67/hr)	Kris Williams NRW Specialist Hours (\$75/hr)	Local Field Technician Hours (\$33/hr)	Budget Year 1	Budget Year 2	Budget Year 3
Task A - Review existing water loss control m	8	8	80	20	20	\$11,184		
Task B: Review existing analytical studies rel	8	8	20	20	0	\$6,504		
Task C: Review CIP projects for impact on wa	8	8	40	10	0	\$7,094		
Task D: Review water audit data	8	8	10	40	0	\$7,334	\$7,334	\$7,334
Task E: Financial/Analytical model developme	8	8	16	16	0	\$5,936		
Task F: Develop Water Loss control implemer	8	8	80	10	0	\$9,774		
TOTAL PROPOSED BUDGET PER YEAR						\$47,826	\$7,334	\$7,334
TOTAL HOURS PER YEAR	48	48	246	116	20	478	66	66

	Steven Preston Project Director Hours (\$229/hr)	Reinhard Sturm Project Advisor Hours (\$229/hr)	Peter Jinks Project Manager Hours (\$67/hr)	Kris Williams NRW Specialist Hours (\$75/hr)	Local Field Technician Hours (\$33/hr)	Budget Year 1
Task A - Review existing water loss control measures	0	0	0	0	0	\$0
Task B: Review existing analytical studies related to water loss con	0	0	0	0	0	\$0
Task C: Review CIP projects for impact on water losses	0	0	0	0	0	\$0
Task D: Review water audit data	0	0	0	0	0	\$0
Task E: Financial/Analytical model development	0	0	0	0	0	\$0
Task F: Develop Water Loss control implementation strategy	0	0	0	0	0	\$0
Task G: Water loss control program management services	240	140	1600	40	1820	\$257,280
Annual Expenses - Accommodation, Travel, Transportation, Office						\$63,000
Annual Expenses - nrwmanager (web-based holistic Non-Revenue Water (NRW) and Water Network management application)						\$20,000
TOTAL PROPOSED BUDGET PER YEAR						\$340,280
TOTAL HOURS PER YEAR	240	140	1600	40	1820	3840