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Attorneys for Appellant Core Tech International Corp.

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

IN THE APPEAL OF

CORE TECH INTERNATIONAL CORP.,

Appellant.

-) Docket No. OPA PA-17-10
-) **APPELLANT CORE TECH INTERNATIONAL CORP.'S REPLY**
-) **NATIONAL CORP.'S REPLY**
-) **MEMORANDUM IN SUPPORT OF ITS**
-) **OBJECTIONS TO DEPARTMENT OF**
-) **PUBLIC WORKS' PRIVILEGE LOG**
-) **AND MOTION TO COMPEL**
-) **PRODUCTION OF DOCUMENTS**

Appellant Core Tech International Corp. ("CTI") submits this Reply to the Opposition filed by Appellee Department of Public Works ("DPW"). At a hearing in this matter on December 13, 2017, the Hearing Officer ordered DPW to file the complete procurement record and a thorough and detailed privilege log concerning any documents for which DPW claimed any privileges. In response, DPW filed a woefully deficient and inadequate log that failed to identify any privilege whatsoever, the basis for the privilege, recipients of documents, or other relevant information necessary to determine whether any privilege actually exists. At the same time, DPW filed a procurement record containing numerous communications between DPW's counsel Mr. Keeler and its client, as well as communications between Mr. Keeler and third parties, such as Parsons Transportation Group ("PTG") and the Federal Highway Administration ("FHWA"). DPW also asserted the defense of reliance on advice of counsel, putting squarely into issue communications

between Mr. Keeler and its client. DPW, as the party seeking to invoke the attorney-client privilege, carries the burden of proving that the privilege exists. *United States v. BDO Seidman*, 337 F.3d 802, 811 (7th Cir. 2003). DPW failed to carry its burden here. Even if the privilege exists here, it is not absolute and can be waived. *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 303 P.3d 1187, 1198 (Colo. 2013). As established in CTI's original motion and in this reply, it is clear beyond doubt that DPW waived any privilege as to the documents on its log.

ARGUMENT

I. DPW CONCEDES THAT ITS PRIVILEGE LOG IS DEFICIENT AND INADEQUATE.

DPW's assertion that it intends to file a supplemental log by January 17, 2018 is too little, too late, and constitutes an admission that the logs it produced were deficient and inadequate.

Moreover, DPW asserts that CTI was provided a privilege log which was produced in response to a Sunshine Act request which "details the specific statutory privileged claimed by DPW". DPW Opposition at 2. This is incorrect. CTI sent Sunshine Act requests to DPW, Mr. Keeler and the Office of the Attorney General ("OAG"). The letter from Karl P. Espaldon, Deputy Attorney General and attached privilege log (Exhibit A to the Opposition) are the response of the **OAG** to CTI's Sunshine Act request. It is **not** the response of DPW and DPW did **not** provide the same privilege log. DPW therefore cannot claim that the OAG's privilege log shields DPW from disclosing the allegedly privileged documents. Instead, DPW provided the deficient privilege log by which it is now bound.

In providing a deficient and inadequate privilege log, DPW, as the party seeking to invoke the attorney-client privilege, fails to carry its burden of proving that the privilege exists as to each and every one of the documents it claims is privileged. *United States v. BDO Seidman*, 337 F.3d

802, 811 (7th Cir. 2003). DPW does not even discuss in its Opposition how these documents are covered by the attorney-client or any other privilege. CTI reiterates its request that the Hearing Officer find that DPW waived any attorney-client or attorney work product privilege by failing to provide a sufficiently detailed privilege log and that the documents described therein should be produced to CTI forthwith.

II. PTG IS NOT AN AGENT OF DPW.

To shield the communications between Mr. Keeler and PTG from disclosure, DPW now contends that PTG is an “agent” of DPW and that the attorney-client privilege applies between Mr. Keeler and PTG. DPW fails to substantiate this theory, either factually or legally.

The cases cited by DPW are of no assistance. In *United States v. Judson*, 322 F.2d 460, 462 (9th Cir. 1963) the Ninth Circuit held that the attorney-client privilege applied to a net worth statement prepared by accountants **who were retained by the client to assist the attorney in providing legal advice**. Similarly, in *United States v. Jacobs*, 322 F. Supp. 1299, 1303 (C.D. Cal. 1971), the court held that a memorandum from a lawyer to an accountant stating facts in confidence which had been related to the attorney by the client **for the purpose of the lawyer obtaining the accountant’s assistance in rendering a legal opinion**, is privileged. There is not a scintilla of evidence here that PTG was retained to assist Mr. Keeler in providing legal advice to DPW.

The declaration of Michael Lanning, attached as Exhibit B to DPW’s Opposition, states that “PTG provides compliance management assistance, augments the forward planning and execution effort by DPW, and provides advice to the DPW.” M. Lanning Decl., ¶ 2. These broad statements do not establish an agency relationship between DPW and PTG. Notably missing from Mr. Lanning’s declaration (and indeed anywhere in the Opposition) is any statement that PTG acts at the direction of DPW or as an agent for DPW. Instead, Mr. Lanning’s declaration makes it clear

that PTG is merely an independent third party that has a contractual relationship to provide certain services to DPW. This does not provide any factual or legal basis for determining that PTG is an agent for DPW sufficient to allow application of the attorney-client privilege to PTG.

As the vast majority of the allegedly privileged communications in the Attorney/Client Log were made to or with PTG employees only, there is no attorney-client privilege between PTG and the OAG or PTG and Mr. Keeler. The communications listing only the PTG employees and Mr. Keeler (e.g., 12-09-16, 07-27-17, 08-17-17 to 08-18-17, 08-18-17, 08-29-17, etc.) are therefore not privileged for lack of an attorney-client relationship. Where DPW *and* PTG personnel are recipients of any communications, the voluntary disclosure of privileged information to PTG destroys the privilege. *In Re Pacific Pictures Corp.*, 679 F.3d 1121, 1126-27 (9th Cir. 2012).

III. DPW PROVIDES NO EXCEPTION TO THE GENERAL RULE OF WAIVER.

DPW states that its “disclosure of thousands of pages of documents does not mean that the department waived privileged communications contained in the Supplemental Attorney/Client Log or earlier filings.” DPW Opposition at 4. Actually, it does. DPW is now attempting to withhold several of the emails already produced, including those dated: 03-15-17; 03-29-17; 08-18-17; and 08-21-17. DPW also produced several other emails in Exhibit B (attached to A. Arriola Decl. in support of CTI’s Objections and Motion) which relate to the same subject matter and for which no privilege log was provided. These emails are of the same type listed in the Attorney/Client Log which DPW is now refusing to disclose. DPW’s only explanation is that it disclosed “in good faith” thousands of pages of documents. DPW Opposition at 4. This is insufficient as a matter of law to bar a finding of waiver. It was incumbent upon DPW to review the documents prior to production, to segregate any privileged documents and not disclose them, and to provide a privilege log for such documents. DPW did not do this. DPW cannot disclose

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thousands of pages of documents, and then after the fact claim that they are privileged. The law requires more. *People v. Trujilo*, 144 P.3d 539, 542-43 (Colo. 2006) (waiver of attorney-client privilege occurs when a client discloses privileged communications to a third party).

The emails in Exhibit B were produced three times: in response to the two Sunshine Act requests and as part of the procurement record, without objection and without a privilege log. Even after CTI filed its Objections and Motion to Produce Documents attaching other communications between Mr. Keeler, PTG, and DPW, DPW failed to take any action to obtain return of such documents and to object to their disclosure – there was no attempt to clawback the documents or to file any objections. For example, CTI submitted as Exhibit 9 on its Exhibit List, filed with the OPA on November 22, 2017, an email thread between Mr. Keeler, PTG and DPW discussing a draft of the Final Demand to Complete Project letter.¹ DPW did not object to CTI’s designation of this email thread as privileged and did not demand its return. As such, disclosure of the emails was voluntary and intentional, communicated to CTI without objection, and therefore any privileges were waived. *Curto v. Med. World Communications, Inc.*, 783 F. Supp. 2d 373, 378 (E.D.N.Y. 2011) (plaintiff waived attorney-client privilege by serving otherwise privileged documents directly on defendant’s counsel).

IV. DPW WAIVED THE ATTORNEY-CLIENT PRIVILEGE; MR. KEELER IS A NECESSARY WITNESS.

There are two critical reasons why Mr. Keeler is a necessary witness and why the documents on DPW’s log should be produced:

¹ This email thread and the attached draft letter are highly relevant to CTI’s claim that DPW did not give notice of default and an opportunity to cure. A true and correct copy is attached hereto as Exhibit 1. The draft letter contains a provision giving notice and an opportunity to cure: “If CTI fails or otherwise elects to not submit a proposal as discussed herein, DPW intends on terminating the Contract and . . . deduct \$xxx.xx from the contract value.” This key provision did not appear in the Final Demand to Complete Project letter ultimately issued to and received by CTI.

First, as discussed above, DPW waived any attorney-client or work product privilege by producing several of the documents not once, but three times. By waiving the privileges and producing communications in which Mr. Keeler played a key role in advising DPW about the Contract and the Project, Mr. Keeler is a witness. He provided key advice in the communications already produced and no one else can replicate his thought processes, analyses or legal knowledge as to why he gave certain counsel to DPW.

Second, as stated previously in CTI's Motion to Disqualify Mr. Keeler, his testimony is unobtainable elsewhere. DPW contends that PTG and DPW personnel can testify about the advice given by Mr. Keeler, but they cannot tell CTI or the OPA how and why he came to the conclusions that he did; what he did to research and analyze the legal matters at issue; and whether he knew of or offered any other advice to DPW as alternatives. For example, DPW claims that Mr. Keeler advised them to terminate the Contract with CTI because the surety bond would expire within a year after substantial completion of the Project (DPW claims that substantial completion occurred on August 26, 2016). However, the plain language of the bond states that DPW is not a claimant under the bond, it is defined as an "Obligee." A true and correct copy of the bond is attached hereto as Exhibit 2. Therefore, the one-year limitations period to assert a claim under the bond applies to claimants, such as subcontractors, not DPW, the Obligee. Mr. Keeler's advice, if he in fact gave such, is erroneous and unreasonable.

In determining whether disqualification is warranted, "the critical question is whether the litigation can be conducted in fairness to all parties." *People v. Harlan*, 54 P.3d 871, 877 (Colo. 2002). In all fairness, CTI should be allowed to question Mr. Keeler regarding his advice, otherwise CTI will be left with only the ability to impeach DPW's version of the advice and facts supporting the advice. Finally, given the importance of the issue, it is remarkable that in all of the

thousands of pages produced by DPW, there is not a single page that confirms Mr. Keeler's alleged advice to DPW. In all fairness, CTI is entitled to test the credibility of Mr. Keeler and to determine whether Mr. Keeler actually gave the advice, the contents of such advice, and if the advice of counsel defense is actually a pretext for DPW's retaliation against CTI.

CONCLUSION

For all of the foregoing reasons, Appellant Core Tech International Corp. respectfully requests that the Office of Public Auditor sustain its objections to Department of Public Works' privilege log and order that all documents listed on the log be produced to Appellant forthwith.

Dated this 22nd day of January, 2018.

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

By: 
ANITA P. ARRIOLA

ARRIOLA, COWAN & ARRIOLA, HAGATÑA, GUAM 96910

From: Yao, David
To: "Tom Keeler"; Lanning, Michael; joaquin.blaz
Subject: RE: DPW & Route 1/8 Bridges Reconstruction Project
Date: Wednesday, March 15, 2017 11:44:00 PM
Attachments: LTR_DPW-CTI_Final_Demand_to_Complete_Project_14MAR2017_DY.doc
LTR_DPW-Fidelity_Contract_Default_Notification_26AUG2014.pdf

All,

Please see attached edit.

Also attached is the default notification to CTI's surety.

Thank you,

David Yao, LEED AP
Construction Contract Administrator
590 S. Marine Corps Dr., Suite 403, Tamuning, GU 96913
david.yao@parsons.com - P: +1 671.648.1061 M: +1 671.488.4203

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-----Original Message-----

From: Tom Keeler [mailto:tkeeler@guamag.org]
Sent: Wednesday, March 15, 2017 12:43 PM
To: Lanning, Michael <Michael.Lanning@parsons.com>; Yao, David <David.Yao@parsons.com>; joaquin.blaz <joaquin.blaz@dpw.guam.gov>
Subject: DPW & Route 1/8 Bridges Reconstruction Project

Confidential Attorney/Client Privileged Communication

Gents,

Attached is a ROUGH DRAFT letter to Core Tech. The letter is intended to place Core Tech on notice that it has 10 days to complete Project signage and submit an acceptable plan and timetable to correct all ADA non-compliant sidewalks and sidewalk ramps. I don't consider it critical to reference dates of letters, etc. in the bullet pointed items. The primary purpose of the bullet points is to document Core Tech's lack of diligence on the Project. After DOA purged my computer I lost my electronic files. As such, feel free to add information to the first few paragraphs, as you deem appropriate. I also want to insert the date of DPW's letter to Core Tech's bonding company putting it on notice of default. Please provide me another copy of the letter when providing comments to the draft.

I am limiting this message to the 3 of you. Once in receipt of your comments I intend on forwarding the draft to others, including Richelle.

Please note that this is a PRIVELGED communication. Parsons does not need to maintain a copy. I will maintain a copy in my Project log for confidential communications.

Please contact me if you have any questions. Thanks.

Tom

Saina Ma'ase,



Si Thomas P. Keeler
Assistant Attorney General
Office of the Attorney General
590 South Marine Corps Dr.
Ste. 706, ITC Bldg.
Tamuning, Guam 96931
Tel. No.: (671) 475-3324
Fax No.: (671) 472-2493
Email: tkeeler@guamag.org

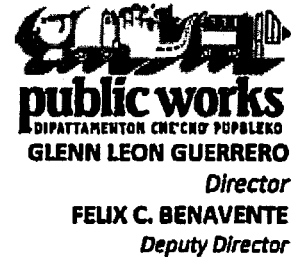
Website: https://urldefense.proofpoint.com/v2/url?u=http-3A__www.guamag.org&d=CwIFAg&c=Nwf-pp4xtYRe0sCRVM8_LWH54joYF7EKmrYldfxlq10&r=N8i015dC7c6hei2-DGOkZX8XbNb7RHaduJiAqJpLLIU&m=4iDvgUU-XdFDyej3aJEkIF9R5rhvmqkiHSmExrUzKJU&s=14DdStI7wCF2jypPZyi-lbsjdQq54ee7PsDIIzbke90&e=

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The Honorable
EDDIE BAZA CALVO
Governor

The Honorable
RAY S. TENORIO
Lieutenant Governor



public works
DIPARTAMENTON CHENKO PUPLEKO
GLENN LEON GUERRERO

Director

FELIX C. BENAVENTE

Deputy Director

DRAFT – March 17, 2017

Ms. Conchita Bathan
Chief Executive Officer
Core Tech International Corporation
388 South Marine Corps Drive
Suite 400
Tamuning, Guam 96913

**Re: Route 1/Route 8 Intersection Improvements and Agana Bridges Replacement
Project No. GU-DAR-T101(001)
Final Demand to Complete Project**

Dear Ms. Bathan:

On August 16, 2011, the Department of Public Works (“DPW”) and Core Tech International Corporation (“CTI”) entered into a Design-Build Contract (“CONTRACT”) for the above referenced project (“Project”). The Contract provided for the Project to be completed in _____784 calendar days of DPW’s Notice to Proceed, which CTI received on October 4, 2011. The Contract included a liquidated damages provision requiring CTI to pay \$3,300 per month following the completion date, as may be extended by Change Order, until Substantial Completion was achieved, at which time liquidated damages would be reduced to a daily charge of \$660.

Substantial Completion was achieved on August 25, 2016. As of August 26, 2017, there were a number of close-out items needed to achieve ~~Full Completion~~ Final Acceptance, ~~two (2) of which remain outstanding~~ with two major items remaining. The first of these items requires CTI to ~~complete installation of remaining Project signage~~ replace non-compliant permanent traffic control signs and correct the installation that does not meet the DPW Standards provided as part of the Request for Proposal (RFP). DPW does not understand the delay in completing the signage and estimates that ~~such~~ this can be completed within 10 days receipt of this letter.

The other outstanding item DPW demands CTI address is the Project’s sidewalks, driveways, and pedestrian ramps that are non-compliant with the Americans with Disabilities Act & Rehabilitation Act (“ADA”). As discussed in further detail herein, DPW’s initial survey estimates that 68% indicates over 80% of the Project sidewalks are ADA non-compliant while CTI has acknowledged that nearly 5460% fail to comply with the Federal Law.

Below is a list of events related to the ADA non-compliant sidewalks and sidewalk ramps on the Project. The list is intended to high light key dates concerning the Project sidewalks and is not considered all inclusive. These events are as follows:

- ~~December–April 2013: DPW provided CTI with an updated Open Issues/Deficiencies List, which has been updated periodically.~~
- ~~June 12, 2014: DPW notified CTI of ADA deficiencies DPW issued Non-Conformance Report (NCR) 12 to CTI on ADA deficiencies for the sidewalk. On June 14th DPW, CTI and PTG met to discuss the non-compliance. DPW requested that CTI submit a proposed procedure to correct the non-compliant slope issues by December 1, 2014.~~
- August 11, 2014: Parsons Transportation Group (PTG) provided CTI with the sidewalk survey data performed by DPW's project inspectors showing 83.1% of the sidewalk cross-slope as being non-compliant.
- ~~October 9, 2014: CTI submitted its assessment survey of the sidewalk cross-slopes acknowledged that 58.2% of the sidewalk panels are non-compliant. This is significantly less than the 83.1% as determined by PTG. Date? DPW.~~
- November 21, 2014: DPW and PTG met with CTI to discuss the non-compliance. DPW requested CTI to submit a proposed procedure to correct the non-compliance issues by December 1, 2014 for DPW's review and approval prior to proceeding with any corrective work.
- ~~October 10, 2015: CTI submitted a survey acknowledging that Fifty Four percent (54%) of the Project sidewalks were non-compliant with both the approved plans and ADA requirements.~~
- November 10, 2015: DPW and CTI met on-site with Director Ben Servino, Guam Department of Integrated Services for Individuals with Disabilities ("DISID") to review the non-compliant sidewalk cross slope. Following the meeting Director Servino instructed CTI to comply with the contract requirements.
- ~~Subsequent to the November 1, 2015 meeting CTI's proposed solution was to grind the 4" thick sidewalk. DPW rejected this proposal due to concerns that remaining thickness would not be sufficient. ELABORATE CITE~~
- ~~CTI performed no work to address the ADA non-compliant sidewalks~~

from late 2015 to _____

- April 29, 2016: At CTI's request, PTG held a site review meeting with CTI's new field management team to clarify the non-compliance. During this meeting, Mr. Robert Marks, CTI's new Project Manager, mentioned that CTI is considering grinding the non-compliant areas to bring the 4-inch thick sidewalk into conformance. Grinding may be a potential solution; however, PTG and CTI agreed that the grinding may create a non-compliant surface for slip resistance and visual appearance. If CTI wishes to pursue grinding as a possible solution, it was suggested that a test area be ground for DPW's review and approval. This suggestion was not an agreement that removal or replacement of the non-compliant sidewalk panels would not be necessary. (Ref. DPW letter dated 5/25/16)
- May 25, 2016: DPW's letter to ~~wrote~~ CTI ~~noting~~ noted that it had yet to receive any proposed resolutions to ADA deficiencies.
- June 21, 2016: DPW's letter to CTI noted that per prior discussions between Mr. Marks and Mr. David Yao, PTG, CTI planned to submit and obtain approval on the proposed resolution for the ADA deficiencies prior to the end of the Festival of Pacific Arts (FestPac) so that work can commence immediately following FestPac. FestPac ended on June 4, 2016. DPW has yet to receive any proposed resolution to the ADA deficiencies.
- August 31, 2016: DPW issued a letter ~~follows~~ requesting an update for the proposed ADA resolution and the completion schedule for the outstanding work CTI committed to submitting by August 17, 2016 during the ~~up-on~~ parties ~~August 3, 2016 Construction Progress Meeting~~ wherein CTI agreed to submit a schedule to complete the remaining work.
- September 21, 2016: The parties held a Construction Progress Meeting. The minutes memorialized that CTI had only submitted proposed resolution for the driveways and temporary traffic control plans to perform the work at pedestrian ramps. The meeting minutes documented that CTI was still working on finalizing the proposed plans for pedestrian ramps and sidewalk slopes.
- September 26, 2016: DPW provided CTI with a Punch List resulting from the parties final inspection. The Punch List was a consolidation of the following:
 1. Unresolved items from the Open Issues/Deficiencies List initially provided to CTI in December 2013 that was periodically updated during the course of the Project.
 2. Unresolved items from the Open Issues List presented during

the March 12, 2015 meeting between PTG and CTI's senior management.

3. In excess of 60 deficiencies noted during the Final Inspection of the Route 1, Route 8 and Bridge 1 portion of the Project. ~~09-26-16 letter~~

- November 8, 2016: CTI submitted its proposed plan to grind the 4-inch thick sidewalk to bring all non-compliant cross-slope into compliance. The proposed plan indicated 52.6% of the sidewalk panels are non-compliant.
- December 12, 2016: DPW completed its review and rejected the proposed plan for the following reasons:
 - The proposed plan required more than 2 inches of grinding in some areas to bring the 4-inch thick sidewalk cross-slope into compliance. This effectively reduces the strength and durability of the sidewalk;
 - The plan did not address the sidewalk continuity with adjacent surfaces or ride smoothness in the direction of travel;
 - Locations of the non-compliant panels are inconsistent with the CTI's survey information submitted on October 9, 2014;
 - The proposed plan did not address the reduction of the concrete cover for the reinforced sidewalk panels at the bridge.
- December 2016: CTI conducted a second on-site meeting with DISID Director Servino in December 2016. Neither DPW nor PTG was notified of the meeting. During the December 19, 2016 Construction Progress Meeting, CTI subsequently reported to DPW that Director Servino "that the sidewalk appears to be acceptable as installed" will perform a review of the sidewalk cross-slope and issue a findings report. CTI also reported that during this site meeting, Director Servino measured and determined that the transition ramp from the sidewalk to the driveway crossing as installed were acceptable, and that he would issue a letter with his determination.
CITE

DPW doubts whether Director Servino ever made this such a statement. His responsibility with DISID is to enforce ADA compliance, and not to issue waivers. DPW has never received the referenced letter from Director Servino, nor does it expect to. Furthermore, whether or not such a letter issued is irrelevant. First, DPW is the party responsible for accepting or rejecting the non-conforming sidewalk work. DPW has not, and will not, accept any sidewalk work that fail to meet Project specifications. Furthermore the Project is funded by the FHWA that is not authorized to pay for work that does not meet contract requirements, including the ADA. Finally, even if DPW were inclined to accept CTI's non-conforming sidewalk work, which it isn't, it does not have the authority to

~~waive ADA requirements. ADA requirements are established by law and are strictly enforced. In 2001 then Governor Carl T. C. Gutierrez, then DPW Director Joseph W. Duenas and DPW were sued for alleged violations of sidewalks and public road access. See, Roland L.G. Taimanglo vs. Carl T.C. Gutierrez, in his capacity as Governor of Guam, et.al., U.S. District Court Civil Case No. 01-00047. Under the terms of a November 15, 2004 Settlement Agreement DPW continues to perform remediation on non-compliance with the ADA and file bi-annual reports with the District Court.~~

- January 13, 2017: CTI conducted a third on-site meeting with DISID Director Servino with DPW and PTG. The purpose of the meeting was for Director Servino to review and verify the measurements for the non-compliant cross-slopes. Director Servino informed the group that he will provide recommendations to DPW based on his findings. The recommendations will not overrule the Americans with Disabilities Act (ADA) issued by the Department of Justice, but will provide guidance on acceptability. Further, Director Servino indicated that the project is Federally funded and compliance with Federal regulation is required. DPW has yet to receive a recommendation letter on the sidewalk cross-slopes from Director Servino, nor does it expect to. Furthermore, whether or not such a letter is issued is irrelevant. First, DPW is the party responsible for accepting or rejecting the non-conforming sidewalk work. DPW has not, and will not, accept any sidewalk work that fail to meet Project specifications. Second, the Project is funded by the Department of Defense (DOD) and overseen by the Federal Highway Administration (FHWA) who is not authorized to pay for work that does not meet contract requirements, including the ADA. Finally, even if DPW were inclined to accept CTI's non-conforming sidewalk work, which it isn't, it does not have the authority to waive ADA requirements. ADA requirements are established by law and are strictly enforced. In 2001 then Governor Carl T. C. Gutierrez, then DPW Director Joseph W. Duenas and DPW were sued for alleged violations of sidewalks and public road access. See, Roland L.G. Taimanglo vs. Carl T.C. Gutierrez, in his capacity as Governor of Guam, et.al., U.S. District Court Civil Case No. 01-00047. Under the terms of a November 15, 2004 Settlement Agreement DPW continues to perform remediation on non-compliance with the ADA and file bi-annual reports with the District Court.

~~In late-early August 2016, CTI agreed-committed to submitting a schedule to complete the close-out items. As with similar contractual obligations to provide acceptable schedules throughout the Project, CTI has yet to submit a close out schedule. CTI has failed to submit a close out schedule despite regular follow-up requests by DPW.~~

DPW does not consider it appropriate to call the ADA non-compliant sidewalks and sidewalk ramps a "close-out" item. CTI has been on formal notice of the need to correct the defective concrete work since June 12, 2014. Since that time CTI has failed or otherwise refused to take corrective action needed to bring it in compliance with contract terms and ADA requirements mandated by Federal Law. It appears CTI's efforts have been more focused on attempting to obtain a waiver than correcting the non-compliant sidewalks.

This serves to notify CTI that it has 10 days from receipt of this letter to 1) complete the past due signage work; and 2) submit a plan acceptable to DPW and the FHWA for how to bring all Project sidewalks, driveways and sidewalk-pedestrian ramps into full compliance with its contractual obligations and ADA requirements. CTI's proposal is also required to provide a firm deadline for completing all outstanding items.

If CTI fails or otherwise elects to not submit a proposal as discussed herein, DPW intends on terminating the Contract and _____ deduct \$xxx.xx from the contract value.

Please contact my office if you have any questions.

Sincerely,

FELIX C. BENAVENTE

Cc: Elizabeth Barrett-Anderson, Guam Attorney General (*via email only*)

PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that

CORE TECH INTERNATIONAL CORPORATION

(Name of Design-Builder)

hereinafter called the "Design-Builder" and

FIDELITY AND DEPOSIT COMPANY OF MARYLAND
AND
ZURICH AMERICAN INSURANCE COMPANY

(Name of Surety)

a corporation duly organized under the laws of the State of ^{Maryland} ~~New York~~ ^{and} and authorized to transact business in the Territory of Guam, as Surety, are held and firmly bound unto the Government of Guam, as obligee, hereinafter called the "Government" for use and benefit of claimants as herein below defined, in the amount of SIXTEEN MILLION THREE HUNDRED EIGHTY FOUR THOUSAND FIVE HUNDRED AND NO/100THS DOLLARS (\$16,384,500.00) for the payment whereof the Design-Builder and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Design-Builder has by written Agreement dated August 24, 20 11, entered into a Contract with the Government of Guam for the:

**ROUTE 1/ROUTE 8 INTERSECTION IMPROVEMENTS
AND AGANA BRIGES REPLACEMENT
PROJECT NO. GU-NH-0001(014) and PROJECT NO. GU-DAR-0001(014)
(DESIGN-BUILD)**

in accordance with drawings, specifications, and documents prepared by the Department of Public Works, which contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if the Design-Builder shall promptly and faithfully perform said contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect, subject, however, to the following conditions:

- A. The Surety hereby waives notice of any alteration or extension of the time made by the Government provided the same is within the scope of the Contract.

PPB-1



of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Design-Builder at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
3. Other than in a court of competent jurisdiction in and for the Territory of Guam.

F. The amount of the payment bond shall be reduced equivalent to the extent of any payment(s) made in good faith hereunder, inclusive of the payment by the Surety of mechanic's liens which may be filed on record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS 24th day of August, 20 11 A.D.

IN THE PRESENCE OF:

(Note: If the Principals are Partners, each must execute the Bond)

(WITNESS)

(TITLE)

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND
(MAJOR OFFICER OF SURETY)

(TITLE) JOHN N. BUSTARD,
ATTORNEY-IN-FACT FOR ERIC D. BARNES,
ASSISTANT VICE SECRETARY

ZURICH AMERICAN INSURANCE COMPANY

(TITLE) JOHN N. BUSTARD,
ATTORNEY-IN-FACT FOR GREGORY E. MURRAY,
SECRETARY



CORE TECH INTERNATIONAL CORPORATION
(DESIGN-BUILDER) (SEAL)
Ho S. Eun, President

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND
(MAJOR OFFICER OF SURETY)

(TITLE) JOHN N. BUSTARD,
ATTORNEY-IN-FACT FOR FRANK E. MARTIN, JR.,
VICE PRESIDENT

ZURICH AMERICAN INSURANCE COMPANY

(TITLE) JOHN N. BUSTARD,
ATTORNEY-IN-FACT, FRANK E. MARTIN, JR.,
VICE PRESIDENT

Takagi & Associates, Inc.

(RESIDENT GENERAL AGENT)

ZURICH AMERICAN INSURANCE COMPANY

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, that the ZURICH AMERICAN INSURANCE COMPANY, a corporation created by and existing under the laws of the State of New York does hereby nominate, constitute and appoint John N. BUSTARD, Harvey C. KING, Wesley I. UEMOTO, Paul C. KENNEDY and M Dolores HOLTER, all of Honolulu, Hawaii, EACH its true and lawful Attorneys-In-Fact with power and authority hereby conferred to sign, seal, and execute in its behalf, during the period beginning with the date of issuance of this power. : any and all bonds and undertakings, recognizances or other written obligations in the nature thereof, and to bind ZURICH AMERICAN INSURANCE COMPANY thereby, and all of the acts of said Attorney[s]-in-Fact pursuant to these presents are hereby ratified and confirmed . This Power of Attorney is made and executed pursuant to and by the authority of the following By-Law duly adopted by the Board of Directors of the Company which By-Law has not been amended or rescinded.

Article VI, Section 5. "...The President or a Vice President in a written instrument attested by a Secretary or an Assistant Secretary may appoint any person Attorney-In-Fact with authority to execute surety bonds on behalf of the Company and other formal underwriting contracts in reference thereto and reinsurance agreements relating to individual policies and bonds of all kinds and attach the corporate seal. Any such officers may revoke the powers granted to any Attorney-In-Fact."

This Power of Attorney is signed and sealed by facsimile under and by the authority of the following Resolution adopted by the Board of Directors of the ZURICH AMERICAN INSURANCE COMPANY by unanimous consent in lieu of a special meeting dated December 15, 1998

" RESOLVED, that the signature of the President or a Vice President and the attesting signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile on any Power of Attorney pursuant to Article VI, Section 5 of the By-Laws, and the signature of a Secretary or an Assistant Secretary and the seal of the Company may be affixed by facsimile to any certificate of any such power. Any such power or any certificate thereof with such facsimile signature and seal shall be valid and binding on the Company. Furthermore, such power so executed, sealed and certified by certificate so executed and sealed shall, with respect to any bond or undertaking to which it is attached, shall continue to be valid and binding on the Company."

IN WITNESS WHEREOF, the ZURICH AMERICAN INSURANCE COMPANY has caused these presents to be executed in its name and on its behalf and its Corporate Seal to be hereunto affixed and attested by its officers thereunto duly authorized, this 28th day of June, A.D. 2011. This power of attorney revokes that issued on behalf of John N. BUSTARD, Harvey C. KING, Wesley I. UEMOTO, Paul C. KENNEDY, Lisa KONNO, dated October 20, 2009.



ZURICH AMERICAN INSURANCE COMPANY

Gregory E. Murray

Frank E. Martin Jr.

STATE OF MARYLAND }
CITY OF BALTIMORE } SS:

Gregory E. Murray Secretary *Frank E. Martin Jr.* Vice President

On the 28th day of June, A.D. 2011, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came the above named Vice President and Secretary of ZURICH AMERICAN INSURANCE COMPANY, to me personally known to be the individuals and officers described in and who executed the preceding instrument and they each acknowledged the execution of the same and being by me duly sworn, they severally and each for himself deposed and said that they respectively hold the offices in said Corporation as indicated, that the Seal affixed to the preceding instrument is the Corporate Seal of said Corporation, and that the said Corporate Seal, and their respective signature as such officers, were duly affixed and subscribed to the said instrument pursuant to all due corporate authorization.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above.



Constancia A. Davison

Notary Public

My Commission Expires: July 14, 2015

This Power of Attorney limits the acts of those named therein to the bonds and undertaking specifically named therein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

CERTIFICATE

I, the undersigned, a Secretary of the ZURICH AMERICAN INSURANCE COMPANY, do hereby certify that the foregoing Power of Attorney is still in full force and effect, and further certify that Article VI, Section 5 of the By-Laws of the Company and the Resolution of the Board of Directors set forth in said Power of Attorney are still in force.

IN TESTIMONY WHEREOF I have hereto subscribed my name and affixed the seal of said Company

the 24th day of August, 2011

Gerald F. Haley

Gerald F. Haley

Secretary



GOVERNMENT OF GUAM
DEPARTMENT OF REVENUE AND TAXATION
OFFICE OF THE INSURANCE COMMISSIONER
CERTIFICATE OF AUTHORITY

RENEWAL

2011/12-364

Know All Men By These Presents That:

Name ZURICH AMERICAN INSURANCE COMPANY

Address 1400 AMERICAN LANE
SCHAUMBURG

TOWER 1, 19TH FLOOR
IL 60196 1056

Classes of Insurance
Authorized

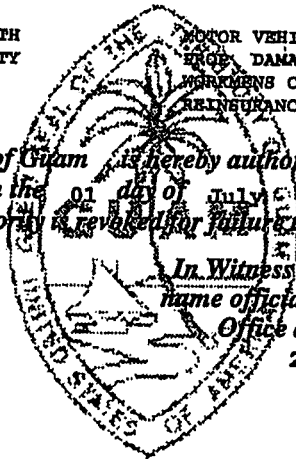
ACCIDENT & HEALTH
FIDELITY & SURETY
FIRE
MARINE
MISCELLANEOUS

FOR VEHICLE
BODILY DAMAGE & LIABILITY
WORKMENS COMP
REINSURANCE P & C

Having complied with the Insurance Law of Guam is hereby authorized to transact as an insurer, the above named Classes of Insurance in Guam from the 01 day of July, 20 11, to the 01 day of July, 20 12, unless authority is revoked for failure to comply with the law.

General Agent(s):

TAKAGI & ASSOCIATES INC
CASSIDY'S ASSOCIATED INSURERS INC



In Witness Whereof, I have hereunto subscribed my name officially and have hereon impressed my Seal of Office at the City of Hagatña, Guam on this 20 day of June A.D. 20 11 .

Artemio B. Ilagan
ARTEMIO B. ILAGAN

Acting Insurance Commissioner