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RECEIVED
 OFFICE OF PUBLIC ACCOUNTABILITY
 PROCUREMENT APPEALS
 DATE: January 16, 2017
 TIME: 2:41 AM PM BY: AR
 FILE NO OPA-PA: 17-010

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

<p>IN THE APPEAL OF:</p> <p>CORE TECH INTERNATIONAL CORP.,</p> <p style="text-align: right;">Appellant,</p> <p style="text-align: center;">AND</p> <p>DEPARTMENT OF PUBLIC WORKS,</p> <p style="text-align: right;">Purchasing Agency.</p>	<p>) DOCKET NO. OPA-PA-17-010</p> <p>)</p> <p>)</p> <p>) OPPOSITION TO OBJECTIONS TO</p> <p>) DEPARTMENT OF PUBLIC WORK'S</p> <p>) PRIVILEGE LOG AND MOTION TO</p> <p>) COMPEL PRODUCTION OF</p> <p>) DOCUMENTS</p>
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**THE DEPARTMENT OF PUBLIC WORKS' OPPOSITION IN OPPOSITION
 TO APPELLANT'S OBJECTIONS TO PRIVILEGE LOG AND MOTION TO
 COMPEL PRODUCTION OF DOCUMENTS**

I. DPW HAS PROVIDED A DETAILED PRIVEGE LOG

On November 3, 2017, the Department of Public Works ("DPW") legal counsel filed a Confidential Communication Log with the Office of Public Accountability ("OPA"), properly setting forth with respect to each communication: the date, sender, recipient, the general nature of the privilege claimed and document type. DPW filed a supplemental Attorney/Client Log

Communications Confidential (“Supplemental Attorney/Client Log”) on December 20, 2017. In addition, as of December 21, 2017 CTI was in receipt of a document entitled “Exhibit C” that details the specific statutory privileged claimed by DPW under 5 G.C.A., Chapter 10, which was produced in response to a CTI FOIA Request. *See*, Exh. A. While DPW appreciates that a FOIA response is a separate and distinct matter from the OPA proceedings, Exh. A nonetheless documents CTI’s possession of a detailed Attorney/Client Log five (5) days prior to the filing of its December 26, 2017 Objection to said Attorney/Client Log with a Motion to Compel Production of Documents.

It is well established that the attorney client privilege generally protects confidential communications made by a client to his lawyer for the purpose of obtaining legal advice. *Swindler & Berlin v. United States*, 524 U.S. 399, 403 (1998). "The attorney-client privilege protects confidential disclosures made by a client to an attorney ... to obtain legal advice ... as well as an attorney's advice in response to such disclosures." *Chen*, 99 F.3d at 1501 (citation and internal quotation marks omitted); *see also Bauer*, 132 F.3d at 507 (explaining that the "attorney-client privilege is a two-way street"). The purpose of the attorney-client privilege is to "encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Upjohn Co. v. United States*, 449 U.S. 383, 389, 101 S.Ct. 677, 66 L.Ed.2d 584 (1981). Clients must be able to consult their lawyers candidly, and the lawyers in turn must be able to provide candid legal advice. *Chen*, 99 F.3d at 1499-1501.

"[T]he purpose of the work product privilege is to protect the integrity of the adversary process." *Parrott v. Wilson*, 707 F/2d 1262, 1271 (11th Cir. 1983); *see also Admiral Ins. Co. v. U.S. Dist. Ct., Dist. of Az.*, 881 F.2d 1486, 1494 (9th Cir. 1989) ("The conditional protections afforded

by the work-product rule prevent exploitation of a party's efforts in preparing for litigation.").

CTI's waiver claim is sharply at odds with its own behavior in failing to file an objection for almost two (2) months. The objection was also filed nearly two (2) weeks *after* its Appeal was first scheduled to be heard. Furthermore, it was in receipt of Exhibit A well before filing its motion. Accordingly, CTI is not able to show that it has been prejudiced.

Finally, even if the Office of Public Accountability ("OPA") were to find that the Supplemental Attorney/Client Record might require additional information the proper remedy is to direct DPW to provide additional information as opposed to CTI's draconian request that it produce all privileged documents. In this respect, DPW intends on filing a supplemental confidential communications log with the OPA by Wednesday, January 17, 2018.

II. THE ATTORNEY-CLIENT PRIVILEGE ATTACHES TO COMMUNICATIONS BETWEEN ASSISTANT ATTORNEY GENERAL AND PARSONS TRANSPORTATION GROUP.

It is fundamental that a communication from an attorney to a third party acting as an agent "for the purpose of advising and defending his clients" if it reveals confidential client communications. *United States v. Judson*, 322 F.2d 460, 462 (9th Cir. 1963); *see also United States v. Jacobs*, 322 F.Supp. 1299, 1303 (C.D. Cal. 1971); Paul R. Rice, *Attorney-Client Privilege in the United States* § 3:3 (2014) (explaining that "courts have extended the privilege to confidential communications... from the attorney to the agent, and from the agent to the attorney (provided that the communications not from the client reveal prior confidences of the client)").

PTG's sole client on Guam is the DPW. M. Lanning Decl., Exh. B. To perform its services on behalf of DPW's Highway Division, PTG has approximately ten (10) full time employees, with at times one or more employees of a sub-consultant to PTG assigned to its office. These individuals provide assistance to DPW with respect to the planning, design, construction and repair

of Guam's routed roads that are funded by the Federal Highway Administration.

PTG is clearly an agent of DPW. Mr. Keeler's privileged communications with PTG staff are entitled to protection under the attorney-client privilege.

III. DPW LIMITED ITS ATTORNEY-CLIENT PRIVILEGE TO A SMALL NUMBER OF COMMUNICATIONS.

DPW, consistent with its obligations, limited its claim of attorney-client privileged documents. In limiting its claim the department produced thousands upon thousands of pages of documents. This 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.

"The claim of privilege must be made and sustained on a question-by-question or document-by-document basis; a blanket claim of privilege is unacceptable. The scope of the privilege should be 'strictly confined within the narrowest possible limits.'" *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir. 1983) (quoting 8 Wigmore, Evidence § 2291). An entire document or set of documents may be privileged when it contains privileged portions that are "so inextricably intertwined with the rest of the text that they cannot be separated." *United States v. Chevron Corp.*, 1996 WL 264769, *5 (N.D. Cal. Mar. 13, 1996) (citing *Resolution Trust Corp. v. Diamond*, 73 F.Supp. 597, 601 (S.D.N.Y. 1991)). In contrast, "[i]f the nonprivileged portions of a communication are distinct and severable, and their disclosure would not effectively reveal the substance of the privileged legal portions, the court must designate which portions of the communication are protected and therefore may be excised or redacted (blocked out) prior to disclosure." Rice, *Attorney-Client Privilege* §

DPW acted in good faith in disclosing thousands of pages of documents related to the Route 1 and Route 8 intersections, and replacement of two (2) bridges over the Hagatna River (DPW

Project No. GU-DAR-T101(001)) (“Route 1/8 Project”). The department intentionally confined its claim “within the narrowest possible limits.” That some of the documents produced might be related to privileged communications contained in the Attorney/Client Log does not mean the department waived any privileged communications.

IV. DPW HAS NOT WAIVED ANY ATTORNEY-CLIENT OR WORK PRODUCT PRIVILEGE.

AAG Keeler is not a necessary witness to these proceedings and will not be called as a witness to prove any matters that he may have advised DPW and its agents on.

CTI’s attempt to call AAG Keeler as a witness is already briefed as a separate motion. The drafters of the ABA Code have cautioned that the ethical rules “[were] not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel.” ABA Code, Canon 5, n. 31; *Optyl Eyewear Fashion Int’l Corp. v. Style Cos., Ltd.*, 760 F.3d 1045, 1050 (9th Cir. 1985). The cost and inconvenience to clients and the judicial system from misuse of the rules for tactical purposes is significant. *Id.* Because of this potential for abuse, disqualification motions should be subjected to “particularly strict judicial scrutiny.” *Id.* Motions to disqualify the attorney of the opposing party are not favored. *Commonwealth Ins. C. v. Graphix Hot Line, Inc.*, 808 F.Supp. 1200, 1203 (E. D. Pa. 1992).

AAG Keeler is *only* a “necessary” witness if his or her testimony is relevant, material and unobtainable elsewhere. *Carta ex rel. Estate of Carta v. Lumbermens Mut. Cas. Co.*, 419 F. Supp. 2d 23 (D. Mass. 2006); *World Youth Day, Inc. v. Famous Artists Merchandising Exchange, Inc.*, F. Supp. 1297, 1302 (D. Colo. 1994). Merely cumulative testimony does not make a lawyer a necessary witness. *Laforest v. Ameriquest Mortgage, Co.*, 2006 WL 2228871 3 (D. Mass.).

The Guam Transportation Group (“GTG”) provides policy direction and overall guidance to the goals and objectives of the DPW’s 2030 Guam Transportation Program concerning the

planning, design, construction and repair of Guam's routed roads that are funded by the Federal Highway Administration. GTG members are readily available to testify as to any advice given by AAG Keeler's to DPW.

Accordingly, Appellant cannot show that the information it seeks is not unobtainable elsewhere. It also cannot show that DPW waived any Attorney-Client or work product privilege.

DPW's position remains that CTI's ongoing attempts to force the department to disclose confidential information is a fishing exhibition related to its hope of finding something, anything, to substantiate its frivolous and unsubstantiated claim that DPW's August 23, 2017 termination of CTI on the Route 1/8 Project was in retaliation of CTI's separate OPA protests on the Simon Sanchez High School project.

CONCLUSION

Appellant should not be allowed to subvert the rules of Professional Conduct by using the OPA as a tool to disrupt or destroy the confidential attorney/client relationship between Appellee and its attorneys. Appellant's objections to DPW's Privilege Log and Motion to Compel Production of Documents should be denied in its entirety.

Dated this 16th day of January, 2018.

OFFICE OF THE ATTORNEY GENERAL
Elizabeth Barrett-Anderson, Attorney General

By:



THOMAS KEELER
Assistant Attorney General

Docket No. OPA-PA-17-010

EXHIBIT A



Office of the Attorney General of Guam

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December 21, 2017

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Re: Sunshine Reform Act Request (Ref. No. AG 17-0749)

Dear Ms. Arriola:

This letter serves to respond to your December 4, 2017 letter concerning the above-referenced Sunshine Reform Act of 1999 (FOIA) request seeking copies of documents relating to the Route 1/Route 8 Intersection Improvements and Agana Bridges Replacement (Design-Build) Project No. GU-DAR-T101(001).

The documents requested pursuant to the Sunshine Reform Act are provided on the CD marked and herein enclosed as Exhibit A. Also, to ensure that all requested documents are provided in response to the FOIA Request, as well as in the Office of Public Accountability ("OPA") proceedings, enclosed is a full set of the project CD's that were served on your office yesterday via the Department of Public Works Supplemental filing with the OPA. See Exhibit B. Finally, a listing of documents identified pursuant to your request but not subject to disclosure pursuant to the Sunshine Reform Act is attached as Exhibit C.

Please contact me at 475-3324, ext. 3115 if you have any questions.

Sincerely,

Karl P. Espaldon
Deputy Attorney General

Enclosures

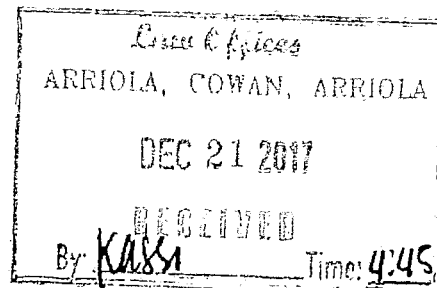


EXHIBIT C

TPKeeler – Attorney/Client Log CONFIDENTIAL COMMUNICATIONS Sheet

Project No.: GU-DAR-T101(001) - Route 1/8 Intersection Improvements

Date of Communication	To:	Re:	5 G.C.A. Chapter 10 Exemption
10/09/14 to 10/15/14	PTG's Lanning, Yao, Titzel, & Ingvarsson, DPW's Blaz & Attorney Miller	Seal escrow documents	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
03/14/16	PTG's Lanning, Yao, Anderson & DPW's Blaz and to AAG Keeler	Issues re final inspection Santo Papa Bridge & draft response to Atty. Ching	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/05/16	PTG's Anderson	Comments on draft letter to CTI's Mr. Ho re Invoice No. 33	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/09/17	PTG's Lanning	Letter re ADA	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
02/09/17	PTG's Lanning, Yao & Lehman; DPW's Blaz	Status of review re extension of time	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
03/15/17	Mike Lanning and David Yao, Parsons Transportation Group (PTG), and Kin Blaz	Draft letter to CTI re ADA non-compliant sidewalks	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
03/23/17	Mike Lanning, PTC and DPW's Kin Blaz*	Email following up on draft letter to CTI	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
03/29/17	AAG Keeler and PTG's Lanning & to PTG's Yao		§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
04/14/17	DAG Espaldon, DAG Orcutt & to AAG Keeler*	Email re project status & sidewalk Cross-Slopes	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
04/19/17	PTG's Lanning	Review of Payment Issues	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
05/08/17	AAG's Keeler & Taylor DAG Nishihira*	" " "	§10108(a); 10108(i) – attorney work product privilege
06/30/17	Dep. Director, DPW's Kin Blaz and Ms. Ibanez and Parsons X 2	Comments on response to Core Tech re Final Demand	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
07/26/17	DAG Espaldon, Orcutt, Nishihira; AAG Taylor	Status Memo on Core Tech default and options	§10108(a); 10108(i) – attorney work product privilege
07/26/17	Mr. Moretto, Parsons & from AAG Keeler	Default options	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
08/02/17	Mr. Blaz	Default options	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
08/17/17 to 08/18/17	AAG Keeler from Mr. Moretto, Parsons	Draft Delays Report (for litigation)	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
08/17/17	Deputy's Espaldon and Orcutt	Project Status Memo	§10108(a); 10108(i)-attorney work product privilege
08/18/17	AAG Keeler and from AAG Keeler to Mr. Moretto	Draft Termination letter	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)

EXHIBIT C

08/21/17	Messrs. Moretto & Lanning, PTG and Mr. Blaz and to AAG Keeler*	Re required notice to Surety	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
08/24/17 to 08/26/17	Messrs. Moretto & Lanning, PTG< and Mr. Blaz*	Need for expert witness	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
08/29/17	Messrs. Moretto & Lanning, PTG & to AAG Keeler	Re potential expert witness	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/08/17	Messrs. Moretto & Lanning, & Yao, PTG and Mr. Blaz	Memo re documents for Surety	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/08/17	DAG's Espaldon, Orcutt & Nishihira;	Draft response to Atty Grego	§10108(a); 10108(i) – attorney work product privilege; §10108(q)
09/12/17	DAG's Espaldon and Orcutt & Acting DAG Taitano	Status memo – CTI desire to finally prepare plans to correct ADA and other noncompliant work	§10108(a); 10108(i)-attorney work product privilege
09/15/17	AAG Keeler	Moretto, PTG, comments on draft to Ms. Pierce and Mr. Blaz	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/15/17	DPW Acting Director Pierce and Mr. Blaz	Project status report & on CTI submittals	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/15/17	DAG's Espaldon & Orcutt, Acting DAG Taitano and Ms. Hernandez, AGO	Status report re CTI default	§10108(a); 10108(i)-attorney work product privilege
09/18/17 to 09/20/17	DPW's A. Pierce & to Mr. Blaz & to L. Hernandez, Sect.*	Advise re CTI inquiry Draft Reservation of Rights Agreement	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/27/17	Mr. Blaz	Items related to CTI's FOIA Request	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
09/27/17	PTG's Lanning, Moretto & Yao	Items related to CTI' s FOIA Request	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/03/17	DPW's A. Pierce, Mr. Blaz Ms. Ibanez and PTG's Lanning Moretto & Yao	Status re communications w/ Surety's Atty.	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/05/17	DAG's Espaldon & Orcutt, & Nishihira	Status report re CTI default & Surety	§10108(a); 10108(i)-attorney work product privilege
10/20/17	Sect. L. Hernandez	Filings	§10108(a); 10108(i)-attorney work product privilege
10/20/17	Mr. Blaz & Messrs. Lanning and Moretto	Draft response to Atty. Arriola's letter	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
10/24/17	DPW Director	Draft delegation of authority re Route 1/8 to Dep. Dir. A. LG	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
10/25/17	Sect. L. Hernandez	CTI submittals	§10108(a); 10108(i)- attorney work product privilege
10/25/17	DPW Deputy Director, Mr. Blaz and PTG Consultants	Forward CTI Appeal	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/25/17	DAG's Espaldon, Orcutt & Nishihira	Forward CTI Appeal via status memo	§10108(i); 10108(i)-attorney work product privilege
10/26/17	AAG Keeler and to Mr. Moretto, Parsons	Emails re status with DPW's new Deputy Director	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege

EXHIBIT C

10/27/17	DPW Staff (x2)	Production of Dox	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/27/17	DPW Deputy Director, Mr. Blaz, & PTG Consultants & to DAG Espaldon, Orcutt & Nishihira*	Possible Rescission	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/30/17	Mr. Blaz, DPW	Draft Decl. re termination	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
10/30/17	AAG Taitano & to AAG Keeler	Agency Report	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
10/31/17	PTG's J. Moretto & to AAG Keeler*	Surety & completion of project	§10108(a); 10108(i)-attorney work product privilege
10/31/17	Sect. L. Hernandez	Need to supplement record	§10108(a); 10108(i)-attorney work product privilege
11/02/17	DPW Deputy Director Draft & Mr. Blaz	Rescission K	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/03/17	Sect. L. Hernandez & Para. M. Cruz & AAG Keeler	Supplemental Record	§110108(a); 10108(i)-attorney work product privilege
11/03/17	Mr. Yao, PTG	Production of Dox	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/03/17 to 11/04/17	DPW Deputy Director & Mr. Blaz (x2)	Draft letter to Mr. Ho, CTI	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
11/04/17	DPW Deputy Director	Draft Motion SJ draft Rescission Agreement	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
11/05/17	AAG Keeler & to DPW Deputy Director	Hrgs & draft Rescission Agreement	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
11/06/17	DPW's Dep. Director & Mr. Blaz; PTG's Lanning, Moretto & Yao	Resc. Agmt., CTI's draft Stip. & draft letter to Mr. Ho.	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)
11/06/17	Mr. Nadell, WSP & Mr. Lanning, PTG*	Witnesses	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/06/17 to 11/07/17	DPW's Dep. Director, & Messrs. Blaz and Bilong	Procurement Record	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/06/17 to 11/07/17 11/09/17	DPW Dep. Director, Messrs. Lanning and Moretto, Parsons & AAG Keeler*	Series of emails and amendments to draft Rescission Agreement	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/08/17	AG Attys. Espaldon, Orcutt, Nishihira & Taitano	Status Memo	§110108(a); 10108(i)-attorney work product privilege
11/09/17	Sect. L. Hernandez	Procurement Record	§110108(a); 10108(i)-attorney work product privilege
11/14/17	Sect. L. Hernandez	Filings	§110108(a); 10108(i)-attorney work product privilege
11/17/17	DPW Dep. Director & Parsons personnel	Email and revised draft Res. Agmt.	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/20/17	Messrs. Lanning, Yao & (x2) Moretto, Parsons*	Scheduled OPA filing	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(q)

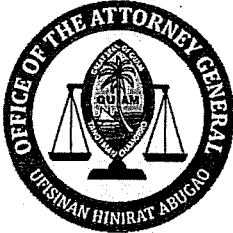
EXHIBIT C

11/20/17	AAG Keeler and to Messrs. Moretto, Lanning and Yao, PTG*	Comments on draft Rescission Agreement	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
11/21/17	Messrs, Lanning, Moretto & Yao, PTG	Inquiry re Project Panels	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/21/17	Mr. Lanning, PTG	Rejection of Sidewalk Panels	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/21/17	Mr. Lanning, PTG	Inquiry re witnesses	§10108(a); 10108(i)- attorney work product privilege
11/21/17	Sect. L. Hernandez & Para. M. Cruz	Appeal Filings	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/26/17	Mr. Moretto, PTG	CTI Status	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
11/27/17	Sect. L. Hernandez	Arriola FOIA Request	§110108(a); 10108(i)-attorney work product privilege
11/29/17	Mr. Lanning, PTG	Draft Decl. Project Funds	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
12/04/17 to 12/05/17	Mr. Moretto, PTG*	Draft Decl.	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
12/05/17	Retired DPW Dep. Benavente	Draft Decl.	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege; §10108(g)
12/05/17	DPW Deputy A. Leon Guerrero	Status with Surety	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/06/17	Sect. L. Hernandez (x2)*	Issues re filings Draft Responses to Disqualify	§10108(a); 10108(i)-attorney work product privilege
12/06/17	Mr. Lanning, PTG*	Production of Dox	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/07/17	Sect. L. Hernandez & Para. Marie Cruz	Hearing Brief	§10108(a); 10108(i)-attorney work product privilege
12/11/17	Para. M. Cruz	Hearing Brief	§10108(a); 10108(i)-attorney work product privilege
12/12/17	AAG Taitano	Hearing Brief	§10108(a); 10108(i)-attorney work product privilege
12/14/17	AAG Keeler from PTG's Mr. Lanning	Related to project costs	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/15/17	DPW Dep. Director & AAG Taitano	Possible Stipulation	§10108(a); 10108(i)-attorney-client privilege; attorney work product privilege
12/18/17 12/19/17	Dep. AG Espaldon & AAG Taitano	Production of Dox	§10108(a); 10108(i)-attorney work product privilege
12/19/17	AAG Taitano	Scheduled Hearing	§10108(a); 10108(i)-attorney work product privilege

*** Represents series of emails re the same subject.**

Docket No. OPA-PA-17-010

EXHIBIT B



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Elizabeth Barrett-Anderson

Attorney General of Guam

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**THE OFFICE OF PUBLIC ACCOUNTABILITY
HAGÁTÑA, GUAM**

In the Appeal of:)

Core Tech International Corp.,)

Appellant,)

and)

GUAM DEPARTMENT OF)
PUBLIC WORKS)

Purchasing Agency)

DOCKET NO. OPA-PA-17-10

**DECLARATION OF
MICHAEL LANNING**

MICHAEL LANNING makes this declaration under penalty of perjury under the laws of Guam and states:

1. I am employed by Parsons Transportation Group (“PTG”), an Illinois corporation, authorized to conduct business on Guam, with offices for the practice of professional engineering and construction management services are located at the ITC Building, 590 South Marine Corps Drive, Suite 403, Tamuning, Guam, 96913. I have been a licensed professional engineer for

twenty-nine (29) years and have worked on or overseen approximately seventy-five (75) road and transportation projects. I am a duly licensed engineer and a member in good standing with the Guam Professional Engineers Architects and Land Surveyors Board.

2. In early 2008, PTG was added to the Guam Transportation Group (“GTG”), which was formed in 2007, to provide policy direction and overall guidance to the goals and objectives of the department’s 2030 Guam Transportation Program. PTG, whose contract was renewed in May 2013, provides compliance management assistance, augments the forward planning and execution effort by DPW, and provides advice to the DPW.

3. PTG’s sole client on Guam is the Department of Public Works (“DPW”). To perform its services on behalf of DPW’s Highway Division, PTG has ten (10) full time employees, with another one (1) employee of a sub-consultant to PTG assigned to its office. These eleven (11) individuals provide assistance to DPW with respect to the planning, design, construction and repair of Guam’s routed roads that are funded by the Federal Highway Administration (“FHWA”).

4. I serve as the Guam Program Manager for PTG. In this role, I provide general oversight and monitoring of FHWA funded projects and meet and communicate with DPW’s Director Glenn Leon Guerrero; its Deputy Director, Andrew Leon Guerrero; DPW’s Acting Highway Administrator, Joaquin Blaz; and Assistant Attorney, General Thomas P. Keeler. I also communicate and meet with DPW’s Director, Deputy Director and Highways Acting Administrator and other DPW staff members throughout the work day and week.

5. I am familiar with DPW and CTI’s Design-Build Contract, dated September 30, 2011, (the “Contract”), pursuant to which CTI agreed to design and perform construction work on the Route 1/8 Intersection Improvements and Agana Bridges Replacement Project No. GU-DAR-

TI01(001) (the "Project"). The Project is fully funded by the FHWA and Department of Defense. I am also familiar with payments made to CTI on the Project by DPW.

6. DPW estimates 83.1% of Project sidewalks, ramps and driveways constructed by CTI do not comply with the Project Plans and Specifications and the American with Disabilities Act ("ADA"). On October 9, 2014, CTI submitted a survey to DPW of the sidewalk cross-slopes that showed 58.2% of the Project's sidewalk panels are non-compliant.

7. DPW has not accepted CTI's non-ADA compliant work on the Project.

8. CTI has not been fully paid for its work on the Project. As documented in the department's Invoice No. 33, DPW has retained an amount of \$572,945.86 to correct CTI's defective work and any punch list items needed to complete the Project, as needed. Attached hereto as Exhibit "A" is a copy of Project Invoice 33.

I declare under penalty of perjury that the aforementioned is true.

Submitted this 1st day of December, 2017.

By:


MICHAEL LANNING

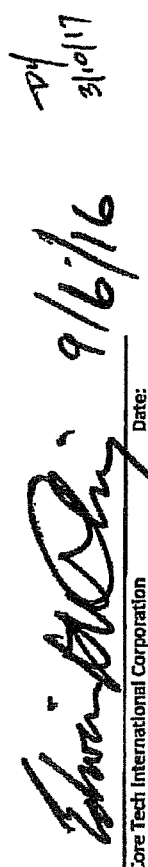
GU-DAR-T101(001)
Route 1/8 Intersection Improvements
and Agana Bridges Replacement
Invoice 33

Invoice Period: April 1, 2016 to September 6, 2016

	DAR	FHWA	TOTAL	Explanation/Comment
Original Contract Amount	\$ 11,239,813.92	\$ 5,144,686.08	\$ 16,384,500.00	
Change Orders	\$ 249,999.00	\$ 1,428.55	\$ 251,427.55	
Current Contract Amount	\$ 11,489,812.92	\$ 5,146,114.63	\$ 16,635,927.55	
Less: Test Frequencies	(49,786.88)		(49,786.88)	
Less: HMA Paving	(47,930.79)		(47,930.79)	
Less: Unused Portion of Change Order 02	(146,343.93)		(146,343.93)	
Revised Contract Amount	\$ 11,245,751.32	\$ 5,146,114.63	\$ 16,391,865.95	DAR = 68.9% of Total Contract; FHWA - 31.2% of Total Contract
Less: Loop Sensor Connection at Route 4 Intersection				Done - \$1,315.14
Less: Copper Interconnect Cable				Done - \$1,250.00
Less: Removal of painted pavement markings, arrow head, pedestrian	(112.50)		(112.50)	
Less: Removal of painted Pavement Marking, Line Striping 4"	(417.26)		(417.26)	
Less: New Pavement Markings	(4,450.00)		(4,450.00)	
Less: Cracked Deck Beam Repair		(25,000.00)	(25,000.00)	
Less: Sidewalk Concrete		(4,965.31)	(4,965.31)	
Less: Permanent Signage		(1,042.23)	(1,042.23)	
Amount Payable	\$ 11,240,771.56	\$ 5,115,107.09	\$ 16,355,878.65	
Less: Schedule Withholding	(12,000.00)		(12,000.00)	
Less: Liquidated Damage	(9,498.86)	(2,169,415.14)	(2,178,914.00)	
Revised Payable	\$ 10,499,766.70	\$ 2,735,691.95	\$ 13,235,458.65	
Less Previously Paid (Thru May 31, 2014)	(9,835,309.41)	(2,462,122.75)	(12,297,432.16)	
Less: Retention	(605,230.00)		(605,230.00)	
Invoice Amount	\$ 11,240,771.56	\$ 2,273,569.20	\$ 13,514,340.76	

4/17/2014 to 3/31/2016 = 715 calendar days x \$3,300 per day = \$2,359,500
 4/17/2014 to 3/31/2016 = 38 months x \$10,000 per month = \$380,000
 Total Liquidated Damages = \$2,739,500

This Invoice is submitted as a progress payment only and Core Tech International Corporation (CTI) specifically reserves the right to submit and recover claims at a future date. CTI disagrees with any deductions for liquidated damages and reserves the right to file and recover any claim for amounts deducted for liquidated damages.


 Edwin Alvarez
 Core Tech International Corporation
 Date: 9/6/16

Amount Payable	\$11,240,771.56	\$5,115,107.09	\$16,355,878.65
Less: Schedule Withholding	(\$120,000.00)	(\$2,169,415.14)	(\$2,289,415.14)
Less: Liquidated Damage	(\$627,004.86)		(\$627,004.86)
Revised Payable	\$10,499,766.70	\$2,735,691.95	\$13,235,458.65
Less Previously Paid (Thru May 31, 2014)	(\$9,835,309.41)	(\$2,462,122.75)	(\$12,297,432.16)
Less: Retention:	(\$299,376.66)	(\$273,569.20)	(\$572,945.86)
Invoice Amount	\$359,080.63	\$0.00	\$359,080.63
Liquidated Damages:			
Previous			\$2,359,500.00
4/1/2016 to 5/19/2016 = 49 CD x \$3,300/day =			\$161,700.00
6/6/2016 to 8/25/2016 = 81 CD x \$3,300/day =			\$267,300.00
8/26/2016 to 9/6/2016 = 49 CD x \$3,300/day =			\$7,920.00
Total Liquidated Damages =			\$2,796,420.00