



BEFORE THE
GUAM CIVIL SERVICE COMMISSION
BOARD OF COMMISSIONERS



IN THE MATTER OF:

MICHELANGELO P. CRUZ,

Employee,

vs.

GUAM WATERWORKS
AUTHORITY,

Management.

ADVERSE ACTION APPEAL
CASE NO. 16-AA03D

JUDGMENT OF DISMISSAL

The Civil Service Commission hereby dismisses the above captioned case with prejudice pursuant to the signed Settlement Agreement, attached hereto.

SO ADJUDGED THIS 28 DAY OF August 2016.

EDITH PANGELINAN
Chairperson

DANIEL D. LEON GUERRERO
Vice-Chairperson

not present
PRISCILLA T. TUNCAP
Commissioner

JOHN SMITH
Commissioner

LOURDES HONGYEE
Commissioner

CATHERINE GAYLE
Commissioner

ORIGINAL



SETTLEMENT AGREEMENT ★

This Settlement Agreement ("Agreement") is entered into this ____ day of _____, 2016, by and between MICHELANGELO P. CRUZ, Employee and the GUAM WATERWORKS AUTHORITY ("GWA"), a public corporation.

RECITALS

WHEREAS, Employee Cruz was given a personnel action demoting him from his previous promotion in his employment with GWA.

WHEREAS, Employee Cruz appealed his personnel action demoting him at GWA in Adverse Action Appeal Case no. 16-AA03D (hereinafter "CSC Appeal"), alleging wrongful demotion.

WHEREAS, it is the desire of the parties to compromise and settle all disputed issues and claims between the parties that were made in the CSC Appeal, and to achieve a mutually acceptable resolution of the dispute between them without incurring further expense, inconvenience, uncertainty and delay of litigation.

NOW, THEREFORE, in consideration of the preceding Recitals and in consideration of the mutual covenants, agreements, representations and promises contained in this Agreement, Employee Cruz and GWA agree as follows:

AGREEMENT

1. Acknowledgment. The parties acknowledge that they are entering into this Agreement based upon their own investigation and in reliance on the representations contained in this Agreement and in reliance on their legal counsel.
2. No Admission of Liability or Guilt. This Agreement does not constitute evidence of, or any admission of, any liability, omission, or wrongdoing of any kind, and it shall not be offered or received into evidence or otherwise filed or lodged in any proceeding against any party except as may be necessary to prove and enforce its terms. It is expressly understood and agreed that neither this Agreement nor any consideration provided pursuant to this Agreement are to be construed as an admission of liability on the part of GWA or regarding any and all claims that may or could have been asserted in any forum. It is further understood and agreed that the consideration referenced herein is in full accord and satisfaction of the disputed claim in the CSC Appeal. Both parties upon inquiry shall not declare itself the prevailing party in the CSC Appeal, but agree that any statements about the finality of this matter be consistent with the terms of this Agreement.
3. Terms Conditions: In consideration of the terms and conditions set forth in this Agreement, Employee Cruz and GWA agree, and shall promptly and in good faith perform and/or execute, upon the following terms and conditions:

COPY

3.1

Employee Cruz Obligations:

- (i) Employee Cruz shall voluntarily dismiss his appeal in CSC Case No. 16-AA03D;
- (ii) Employee Cruz, his agents, successors and assigns, hereby forever release and discharge the GWA, and any and all of its agents, servants, employees, successors, heir, executors, administrators and assigns and any agencies, departments, divisions and employees, servants and agents of the Government of Guam from any and all claim, injuries, demands, causes of actions, liabilities, legal claims, expenses or damages of whatever kind, nature or description whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state or federal law or laws, or under common law or otherwise which they may have had, now has, or hereafter may have, or claim to have, or assert against them as a result of any actions or omissions of the GWA and all of its employees, agents and assign, their heirs, and successors which occurred or could have occurred on or prior to the date of this Agreement.

3.2

GWA Obligations:

- (i) The demotion action as set forth in the CSC Appeal shall be reversed in its entirety, and the demotion action will be expunged from Employee Cruz's personnel file upon entry of a voluntary dismissal of the CSC Appeal in CSC Case No. 16-AA03D;
- (ii) Employee Cruz shall be promoted at GWA from Pumping Station Operator II (\$18.90/hr) to Water Sewer Maintenance Worker Leader (\$20.13/hr), effective January 24, 2016; subject to the normal requirements for promotion at GWA;
- (iii) GWA shall immediately make payment to Employee Cruz the amount of **SIX HUNDRED SIX AND 14/100 US DOLLARS (\$606.14)**, for back pay;
- (iv) GWA, its agents, successors and assigns, hereby forever release and discharge Employee Cruz, in his individual capacity, and any and all of his agents, servants, employees, successors, heirs, executors, administrators and assigns, from any and all claim, injuries, demands, causes of actions, liabilities, legal claims, expenses or damages of whatever kind, nature or description whether known or unknown, suspected or unsuspected or hereafter discovered, whether in law or in equity, upon contract or tort, or under state of federal law or laws, or under common law or otherwise which they may have had, now have, or hereafter may have, or claim to have, or assert against them as a

result of any actions or omissions of Employee Cruz and all of its employees, agents and assigns, their heirs, and successors which occurred or could have occurred on or prior to the date of this Agreement.

4. Intent of the Parties. It is the express intent of the parties that this Agreement discharge all claims that either party may have against the other and operate as a bar to any subsequent proceedings, whether known or unknown, existing now or in the future, pertaining to any claim arising from Employee Cruz against the GWA. The parties realize that the other party may have sustained or incurred unknown or unforeseeable bodily, personal or psychological injuries, damages to property, business or other losses, costs, expenses, damages, liabilities or claims, and the consequences thereof, and any actions of the parties in their individual or official capacities, up to the date of the execution of this Agreement. The parties expressly undertake and assume the risk that the settlement and underlying execution of this Agreement was made on the basis of mistake or mistakes, mutual or unilateral, as to the nature, extent, effects or consequences of any known or unknown, suspected or unsuspected, present or future, underlying losses or damages. Additionally, each party agrees and acknowledges: (a) that it accepts performance of its obligations specified in this Agreement as a full and complete compromise of matters involving disputed issues; (b) that the negotiations for this settlement (including all statements, admissions or communications by the parties of their attorneys or representative shall not be considered by any of said parties; (c) and that no past or present wrong doing on the part of the parties shall be implied by such negotiations.
5. Governing Law. This Agreement and all performances hereunder shall be governed by the applicable federal laws and the laws of Guam.
6. Costs and Expenses. Each party agrees that he shall bear his own costs, expenses and attorney's fees.
7. Integration. This Agreement constitutes the entire agreement of the parties and all prior representations and discussions are merged and incorporated herein. This Agreement may not be amended absent a writing evidencing such an amendment executed by both parties.
8. Waiver. No waiver of any covenant or obligation of this Agreement shall be effective unless contained in a writing signed by the party against whom such waiver is asserted.
9. Breach or Failure of Performance. If a party at any time fails to perform its obligations under this Agreement and any other party seeks to or obtain judicial assistance in enforcing such obligations, the party or parties against whom the provisions are sought to be enforced shall pay, in addition to any damages, attorneys fees and related costs of enforcement if the party seeking enforcement is successful in obtaining the relief which it seeks in such judicial action.
10. Representation. All parties acknowledge and represent that in negotiating this Agreement and the term of this Agreement, they have been represented by and have conferred with legal counsel. Each party represents and warrants that they have carefully

read this Agreement, they understand its contents, their obligations under this Agreement, and that each has executed it as their own free and voluntary act. The parties agree and affirm that the terms of this Agreement have been negotiated at arms length between the parties. Any rule of law or construction or case precedent against liability releases and the rule of interpretation against the draftsman shall not apply in any dispute over interpretation or enforcement of this Agreement.

11. Authorization. Employee Cruz and GWA, inclusive of counsel, each represent and warrant that he/she is legally authorized and competent to execute this Agreement and assumes full responsibility for and assumes the risk of all mistakes in fact or law regarding any damages, losses or injuries, whether disclosed or undisclosed. This Agreement may be executed in counterparts, and each counterpart may be considered an original of this Agreement. Faxed signatures received shall be binding but each party shall promptly deliver to the other the original signature.

12. Severability. If any provision of this Agreement shall be or become legally void or unenforceable for any reason whatsoever, such invalidity and unenforceability shall not impair the validity or enforceability of the provisions of this Agreement. In this event and to this extent only, the objectionable provision shall be severed and the remaining provisions shall be enforced.

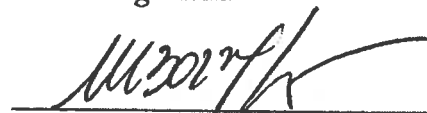
IN WITNESS WHEREOF Employee MICHELANGELO P. CRUZ and GUAM WATERWORKS AUTHORITY have duly executed this Agreement as of the date and year above written.

For Employee:



MICHELANGELO P. CRUZ

For Management:




MIGUEL C. BORDALLO, P.E.
GUAM WATERWORKS AUTHORITY

Approved as to form:



By: JOSHUA D. WALSH
Civille & Tang, PLLC

Approved as to form:



D. GRAHAM BOTHA
Legal Counsel for
Guam Waterworks Authority

639 - Cruz, Michelangelo P

Pay Period Ending Date	Business Unit	Actual Work Date	Pay Type	Hours Worked	Current Hourly Rate	Gross Pay	Promotion Hourly Rate	Pay Diff/Hr.	Estimated Pay Diff. Total
1/25/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
1/26/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
1/27/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
1/28/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
1/29/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/1/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/2/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/3/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/4/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/5/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/8/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/9/2016	6930	Regular Pay	1	5	18.9	94.5	20.13	1.23	6.15
2/9/2016	6930	Regular Pay	1	3	18.9	56.7	20.13	1.23	3.69
2/10/2016	6930	Regular Pay	1	3	18.9	56.7	20.13	1.23	3.69
2/10/2016	6930	Regular Pay	1	2	18.9	37.8	20.13	1.23	2.46
2/10/2016	6930	Regular Pay	1	3	18.9	56.7	20.13	1.23	3.69
2/11/2016	6930	Regular Pay	1	3	18.9	56.7	20.13	1.23	3.69
2/11/2016	6930	Regular Pay	1	5	18.9	94.5	20.13	1.23	6.15
2/12/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/15/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/16/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/17/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/18/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/19/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/20/2016	6930	1/26/2016	200	8	28.35	226.8	30.20	1.85	14.76
2/20/2016	6930	1/26/2016	275	5.5	1.89	10.4	2.013	0.12	0.68
2/20/2016	6930	1/26/2016	200	0.5	28.35	14.18	30.20	1.85	0.92
2/20/2016	6930	1/26/2016	275	0.5	1.89	0.95	2.013	0.12	0.06
2/20/2016	6930	1/27/2016	200	1.5	28.35	42.53	30.20	1.85	2.77
2/20/2016	6930	1/27/2016	275	1.5	1.89	2.84	2.013	0.12	0.18
2/20/2016	6930	1/27/2016	200	8	28.35	226.8	30.20	1.85	14.76
2/20/2016	6930	1/27/2016	275	6	1.89	11.34	2.013	0.12	0.74
2/20/2016	6930	1/27/2016	200	0.5	28.35	14.18	30.20	1.85	0.92
2/20/2016	6930	1/27/2016	275	0.5	1.89	0.95	2.013	0.12	0.06
2/20/2016	6930	1/28/2016	200	8	28.35	226.8	30.20	1.85	14.76
2/20/2016	6930	1/28/2016	275	6	1.89	11.34	2.013	0.12	0.74
2/20/2016	6930	1/29/2016	200	7	28.35	198.45	30.20	1.85	12.92
2/20/2016	6930	1/29/2016	275	6	1.89	11.34	2.013	0.12	0.74
2/20/2016	6930	1/29/2016	200	3	28.35	85.05	30.20	1.85	5.54
2/20/2016	6930	1/29/2016	275	0.5	1.89	0.95	2.013	0.12	0.06
2/22/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/23/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/24/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/25/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/26/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
2/29/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/1/2016	6930	Regular Pay	1	4	18.9	75.6	20.13	1.23	4.92
3/1/2016	6930	Regular Pay	1	4	18.9	75.6	20.13	1.23	4.92
3/2/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/3/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/4/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/5/2016	6930	1/28/2016	200	2	28.35	56.7	30.20	1.85	3.69
3/5/2016	6930	1/28/2016	275	2	1.89	3.78	2.013	0.12	0.25
3/5/2016	6930	2/7/2016	200	8	28.35	226.8	30.20	1.85	14.76
3/5/2016	6930	2/9/2016	200	4	28.35	113.4	30.20	1.85	7.38
3/5/2016	6930	2/9/2016	275	1.5	1.89	2.84	2.013	0.12	0.18
3/5/2016	6930	2/13/2016	200	8	28.35	226.8	30.20	1.85	14.76
3/7/2016	6930	Holiday Pay	5	8	18.9	151.2	20.13	1.23	9.84
3/8/2016	6914	Regular Pay	1	5	18.9	94.5	20.13	1.23	6.15
3/8/2016	6914	Regular Pay	1	3	18.9	56.7	20.13	1.23	3.69
3/9/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/10/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/11/2016	6930	Regular Pay	1	8	18.9	151.2	20.13	1.23	9.84
3/14/2016	6930	Regular Pay	1	8	20.13	151.2	20.13	-	-
3/15/2016	6930	Regular Pay	1	8	20.13	151.2	20.13	-	-
3/16/2016	6930	Regular Pay	1	8	20.13	151.2	20.13	-	-
3/17/2016	6930	Regular Pay	1	8	20.13	151.2	20.13	-	-
3/18/2016	6930	Regular Pay	1	8	20.13	151.2	20.13	-	-

