



BEFORE THE
 GUAM CIVIL SERVICE COMMISSION
 BOARD OF COMMISSIONERS



IN THE MATTER OF:

STUART L. ABAY,

Employee,

vs.

GUAM WATERWORKS
 AUTHORITY,

Management.

ADVERSE ACTION APPEAL
 CASE NO. 16-AA10D

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 25 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 _____ of June, 2016, by and between STUART L. ABAY, Employee and the GUAM WATERWORKS AUTHORITY (“GWA”), a public corporation.

RECITALS

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

WHEREAS, Employee Abay appealed his personnel action demoting him at GWA in Adverse Action Appeal Case no. 16-AA10D (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 Abay 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 Abay and GWA agree, and shall promptly and in good faith perform and/or execute, upon the following terms and conditions:

COPY

3.1

Employee Abay Obligations:

- (i) Employee Abay shall voluntarily dismiss his appeal in CSC Case No. 16-AA10D;
- (ii) Employee Abay, 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 Abay's personnel file upon entry of a voluntary dismissal of the CSC Appeal in CSC Case No. 16-AA10D;
- (ii) Employee Abay shall be promoted at GWA from Wastewater Maintenance Mechanic II (\$15.49/hr) to Water Sewer Maintenance Worker Leader (\$18.78/hr), effective January 24, 2016; subject to the normal requirements for promotion at GWA;
- (iii) GWA shall immediately make payment to Employee Abay the amount of **TWO THOUSAND EIGHTY-NINE AND 60/100 US DOLLARS (\$2,089.60)**, for back pay;
- (iv) GWA, its agents, successors and assigns, hereby forever release and discharge Employee Abay, 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 Abay 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 Abay 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

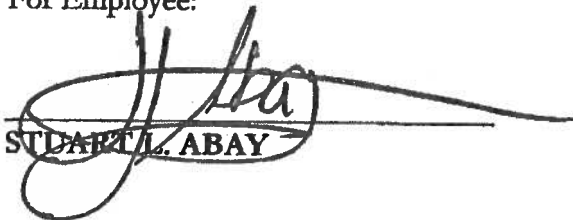
read this Agreement, they understand its contents, their obligations under this Agreement, and that each has executed it as their own free and voluntary act. The parties agree and affirm that the terms of this Agreement have been negotiated at arms length between the parties. Any rule of law or construction 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 Abay 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 STUART L. ABAY and GUAM WATERWORKS AUTHORITY have duly executed this Agreement as of the date and year above written.

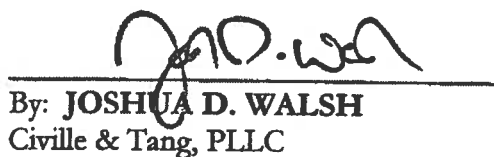
For Employee:


STUART L. ABAY

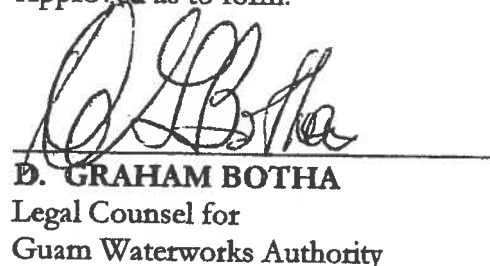
For Management:


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

GUAM WATERWORKS AUTHORITY

GOVERNMENT OF GUAM
 Gloria B. Nelson Public Service Building
 688 Route 15, Mangilao, Guam 96913

NOTIFICATION OF PERSONNEL ACTION

PA 443-2016jce

1. NAME (Last, First, Middle Initial) Abay, Stuart L.	2. Date of Birth [REDACTED]	3. Employee No. & SSN 785 [REDACTED]	4. Date May 27, 2016
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THIS IS TO NOTIFY YOU OF THE FOLLOWING ACTION AFFECTING YOUR EMPLOYMENT.

5. Nature of Action Reinstatement to Promotion	6. Effective Date(s) January 24, 2016	7. Legal Authority Settlement to CSC Case 16-AA10D
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FROM	DESCRIPTION	TO
Wastewater Maintenance Mechanic ii G8B, \$32,221.00 per annum \$15.49 per hour Guam Waterworks Authority Wastewater Operations 5236 - Pumping Facility	8. POSITION TITLE 9. SALARY: Pay Grade, Step, Sub-Step 10. DEPARTMENT OR AGENCY 11. DIVISION 12. SECTION	Water Sewer Maintenance Worker Leader I6C, \$39,057.00 per annum \$18.78 per hour Guam Waterworks Authority Wastewater Operations 5236 - Pumping Facility

13. REMARKS: This action is pursuant to applicable laws, rules, and regulations and is subject to a post audit.

Effective date is reflective of the promised compensation for promoted position paid up to January 23, 2016.

GREG P. CRUZ
 Certifying Officer

Julie C. Adams

 Julie C. Adams, PS IV
 Acting Personnel Services Administrator

 Miguel C. Bortalto, PE
 General Manager

PERSONNEL	PAYROLL	EMPLOYEE	DIVISION	RETIREMENT
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785 - Stuart Abay

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
1/24/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
1/25/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
1/26/2016	6914	Regular Pay	1	4	15.49	61.96	18.78	3.29	13.16
1/27/2016	6914	Regular Pay	1	4	15.49	61.96	18.78	3.29	13.16
1/28/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
1/31/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/1/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/2/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/3/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/4/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/7/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/8/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/9/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/10/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/11/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/14/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/15/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/16/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/17/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/18/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/20/2016	6914	1/25/2016	200	7	23.235	162.65	28.17	4.94	34.55
2/20/2016	6914	1/25/2016	275	6	1.549	9.29	1.878	0.33	1.97
2/20/2016	6914	1/26/2016	200	2	23.235	46.47	28.17	4.94	9.87
2/20/2016	6914	1/26/2016	275	2	1.549	3.1	1.878	0.33	0.66
2/20/2016	6914	1/28/2016	200	7	23.235	162.65	28.17	4.94	34.55
2/20/2016	6914	1/28/2016	275	6	1.549	9.29	1.878	0.33	1.97
2/20/2016	6914	2/2/2016	200	6.5	23.235	151.03	28.17	4.94	32.08
2/20/2016	6914	2/2/2016	275	6	1.549	9.29	1.878	0.33	1.97
2/20/2016	6914	2/3/2016	200	7	23.235	162.65	28.17	4.94	34.55
2/20/2016	6914	2/3/2016	275	6	1.549	9.29	1.878	0.33	1.97
2/20/2016	6914	2/4/2016	200	7	23.235	162.65	28.17	4.94	34.55
2/20/2016	6914	2/4/2016	275	6	1.549	9.29	1.878	0.33	1.97
2/21/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/22/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/23/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/24/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/25/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/28/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
2/29/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
3/1/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
3/2/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
3/3/2016	6914	Regular Pay	1	8	15.49	123.92	18.78	3.29	26.32
3/6/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/7/2016	6914	Holiday Pay	5	8	15.49	123.92	18.78	3.29	26.32
3/8/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/9/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/10/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/13/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/14/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/15/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/16/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/17/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/19/2016	6914	2/25/2016	200	7	23.235	162.65	28.17	4.94	34.55
3/19/2016	6914	2/25/2016	275	6	1.549	9.29	1.878	0.33	1.97
3/19/2016	6914	2/26/2016	200	7	23.235	162.65	28.17	4.94	34.55
3/19/2016	6914	2/26/2016	275	6	1.549	9.29	1.878	0.33	1.97
3/19/2016	6914	2/28/2016	200	7	23.235	162.65	28.17	4.94	34.55
3/19/2016	6914	2/28/2016	275	6	1.549	9.29	1.878	0.33	1.97
3/20/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/21/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/22/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/23/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/24/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/27/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/28/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/29/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32
3/30/2016	6914	Vacation Pay	15	8	15.49	123.92	18.78	3.29	26.32

