Guam Council on the Arts & Humanities Agency
Kåhan I Kotturan Guåhan

**Honorable Lou Leon Guerrero**
*Maga' håga'*
*Governor of Guam*

**Honorable Joshua Tenorio**
*Sigundo Maga'lahi*
*Lieutenant Governor of Guam*

**Ann Marie Arceo**
*Mås Ge'hilo'*
*President, Dept. of CHamoru Affairs*

**MEMORANDUM**

DATE: June 13, 2019

2019 JUN 13 PM 3:27

TO: The Honorable Speaker Tina Rose Muña Barnes, 35th Guam Legislature

FROM: Angie R. Taitague, Program Coordinator III, Guam Council of the Arts & Humanities Agency (CAHA)

SUBJECT: **Remaining Balance from Guam Legislature Percent for the Arts Project**

***Håfa Adai*!** Speaker Muña Barnes,

On November 23, 2016, the Guam Council of the Arts & Humanities Agency (CAHA) a division under the Dept. of CHamoru Affairs signed a Memorandum of Agreement with the 33rd Guam Legislature for the renovation of the old Guam Congress building. Based on Public Law 31-118, §§850, 852 and 853 of Article 2, Chapter 8 of Title 1, Guam Code Annotated, Relative to Arts in Buildings, which states that 1% of the total construction cost of $75,000.00 goes to CAHA for the renovation of the Guam Congress/Guam Legislature Building. Therefore after all expenses paid out to the selected artisans for their artwork, RFP Advertising costs and CAHA administrative service fee, there is an unused balance of $14,217 from the $75,000. I would like to kindly request your assistance in obtaining the unused funds from the Percent for the Arts Guam Legislature Building Project to be given to CAHA as we are the administrator of Public Law 31-118.

Should you have any questions, please do not hesitate to contact me at 300-1207 or via email at angie.taitague@caha.guam.gov.

Si Yu'os Ma'åse' for your support regarding this matter.

35GL-19-0608
Speaker Tina Rose Muña Barnes
JUN 13 2019
Time 2:10 (AM) PM
Received By:

Senseramente,

Angie R. Taitague

Angie R. Taitague

Attachments
cc: CAHA PCIV

0608

**Board Members**: **Francis Guerrero**, *Chairperson*, **Joseph Certeza**, *Vice Chairperson*,
Francisco Rabon, Francisco Lizama, Honorable Christopher Fejeran, Fanai Castro

16-0803

**MEMORANDUM OF AGREEMENT**

Between the

**DEPARTMENT OF CHAMORRO AFFAIRS, and its division GUAM COUNCIL ON THE ARTS AND HUMANITIES (CAHA)**

And the

**33rd GUAM LEGISLATURE**

And the

**GUAM PRESERVATION TRUST**

*Ref: RFP 17-3621- 004 for art to be provisioned for the GUAM CONGRESS/GUAM LEGISLATURE BUILDING*

This **MEMORANDUM OF AGREEMENT** (hereafter referred to as "MOA") is entered into on the effective date indicated below by and between the **DEPARTMENT OF CHAMORRO AFFAIRS** and more specifically its division **GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY (CAHA** hereafter referred to as "DCA" or "CAHA" "DCA/CAHA") and the **33rd Guam Legislature** (hereafter referred to as **Guam Legislature** and the **Guam Preservation Trust** (hereafter referred to as GPT).

***WHEREAS***, The GUAM CONGRESS/GUAM LEGISLATURE is scheduled to open in late 2016 and will be a building for the community of Guam.

***WHEREAS***, The GUAM CONGRESS/GUAM LEGISLATURE BUILDING is owned by the Guam Legislature and funds for the renovation of the building are administered by the GPT.

***WHEREAS***, the funding source in compliance of the contract value providing 1% for the arts of the will be administered by the Guam Legislature

***WHEREAS***, the Guam Council on Arts and Humanities Agency (CAHA) is a division of the Department of Chamorro Affairs and CAHA administers Guam's one percent for the arts program by Public Law 31-118;

***WHEREAS***, the Guam Legislature, GPT and its representatives from the GUAM CONGRESS/GUAM LEGISLATURE design team will be actively engaged in managing the artist(s) selected by CAHA under this RFP;

***WHEREAS***, the Guam Legislature desires for the art procured as a result of RFP 17-3621-004, to qualify for Guam Council on Arts and Humanities Agency's one percent for the arts program;

***WHEREAS***, GPT has contracted with BME and SONS to construct the GUAM CONGRESS/GUAM LEGISLATURE with said construction currently in progress;

***WHEREAS*** Guam Legislature , GPT and CAHA and issued RFP 17-3621-004 calling for artists to remit their applications and portfolios expressing interest in producing art ("the Work") for display at the



AFD 1216 +210

GUAM CONGRESS/GUAM LEGISLATURE BUILDING including fine art, crafts/historic reproductions, photography, illustrations;

***WHEREAS*** CAHA will negotiate and enter into contracts with artists to produce art outlined in RFP 17-3621-004 which is necessary for inclusion in the GUAM CONGRESS/GUAM LEGISLATURE BUILDING and,

***NOW THEREFORE,*** the Guam Legislature, GPT and CAHA and in consideration of the mutual covenants hereinafter set forth, do hereby AGREE as follows:

**SECTION 1. WORK COST AND PAYMENT.**

In accordance with CAHA's one percent for the arts program, artists shall be selected by the CAHA selection committee.

Selection Committee Meetings chaired by CAHA Board Member and assisted by CAHA Staff (CAHA staff responsible all aspects of program).

Appointment/ Establishment of Selection Committee- Members include:

a. A representative of the building's owner or of the agency or department involved.
b. The project architect.
c. The Municipal Mayor from the project site.
d. Two practicing artists from Guam
e. A representative from Guam Preservation Trust

Selected artists will be contracted to CAHA utilizing its standard one percent for the arts program contract.

The amount for each piece of art will be negotiated with the artists by CAHA. The total art program will not exceed one percent of the construction costs of the GUAM CONGRESS/GUAM LEGISLATURE BUILDING 0r $75,000 whichever is lower.

Artists will remit payment applications to CAHA for approval. CAHA will review and approve then forward a copy to Guam Legislature and GPT for final approval and processing.

Payments to artists will be made by the Guam Legislature after approval by CAHA, the Guam Legislature and GPT.

The amount of 2% from the 1% allocated overall for the Percent for the Arts Program shall be made payable to Guam CAHA for administrative costs.

**SECTION 2. WORK PERFORMANCE AND RESPONSIBILITIES:** CAHA, the Guam Legislature and GPT agree that the production of art for the GUAM CONGRESS/GUAM LEGISLATURE BUILDING shall be performed in accordance with the following:

**A. Procurement and Contracting.** CAHA, the Guam Legislature and GPT will complete the procurement process to obtain the Work for the GUAM CONGRESS/GUAM LEGISLATURE BUILDING

and selection process (2); and assist in the enforcement of the contract terms. In addition, CAHA will assist the Guam Legislature and GPT in (1) the preparation of the RFP and (2) provide representation to coordinate the work and schedule of the artisans pursuant to the GUAM CONGRESS/GUAM LEGISLATURE BUILDING design and construction schedule. The Guam Legislature and GPT will: (1) contract with selected artisans and (2) disburse payments to artisans according to contract and (3) disburse payment to CAHA for administrative costs in the amount of 2% from the 1% allocated overall as required by Percent for the Arts Program for the GUAM CONGRESS/GUAM LEGISLATURE BUILDING.

**B. Access to Work and Construction Site.** The Guam Legislature and GPT shall reasonably allow the artisans and employees who shall be contracted to CAHA, to access the project site at all reasonable times prior to and during exhibit installation in order to perform the Work and inspection services. Completion of site specific safety orientation and training is pre-requisite for entry.

**C. Waiver of Rights.** Each party's payment of fees for the services required under this MOA shall not be construed to operate as a waiver of any of its rights hereunder or of any cause of action arising out of the other party's failure to perform this MOA. Each party shall be, and remain, liable to the other party for costs which may be reasonably incurred by the other party as a result of its negligent performance or any responsibilities under this MOA, as specifically limited by the sovereign immunity of the government of Guam, and by the Government Claims Act, 5 GCA §§6101, et seq.

**D. No Liability.** No party assumes any liability for any accident or injury that may occur to any other party, its officers, agents, dependents, staff, contractors or personal property. No party shall be liable to the other parties for any work performed or costs incurred by such other party prior to their execution of this MOA; and each party hereby expressly waives any and all claims for service performed in expectation of this MOA.

**E. Compliance with Laws.** Each party shall comply with all applicable laws of the United States and of Guam in exercising its rights and performing its obligations under this MOA. In addition, each party shall comply, and cause its agents, employees, and contractors to comply, with all applicable laws of the United States and of Guam in performing work under the contracts and/or accessing the project site.

**SECTION 3. MAINTENANCE AND ACCESS TO RECORDS.** For three (3) years from the dates of the final payments under the artist/CAHA contracts, DCA/CAHA and the Guam Legislature and GPT shall maintain, and cause their contractors to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such materials available for inspection at their respective offices at all reasonable times.

**SECTION 4. OWNERSHIP OF WORK and DOCUMENTS** The Guam Legislature shall retain ownership of Work produced by contracted artisans. Each party shall retain ownership of project-related documents, drawings, and specifications ("material") it alone produced prior to the date this MOA is fully executed. Any and all material jointly produced by the parties until that date shall remain jointly owned by the parties. Each party grants the other party full rights of use to its material as well as to the jointly produced material. Artisan contractors shall retain intellectual property rights to use the Work in their portfolio and on their respective websites. By purchasing the Work the Guam Legislature and CAHA will have exclusive rights to use the art in exhibits displays, on their respective websites, and

in print and video format for promotional purposes. Any reproductions of the artisan's Work made by CAHA, or the Guam Legislature must be approved in writing by the artisan contractor(s). In the event that the Guam Legislature and/or CAHA duplicate the artisan contractor's Work for a commercial endeavor, artisans will be credited and compensated via royalties or licensing fees by the Guam Legislature or CAHA as appropriate and as specified in the individual agreements between the Guam Legislature /CAHA and each artisan contractor.

From the date this MOA is fully executed, all project-related material as well as audiovisual recordings and any and all tangible work product produced in regard to the construction contracts, no matter if produced by the CAHA, its artisan contractor(s), the Guam Legislature or its contractor(s), shall be the property of the Guam Legislature, and the Guam Legislature hereby grants the CAHA full rights of use indefinitely thereto. The CAHA shall be entitled, at its cost, to one copy of all such project-related material, audiovisual recordings, and tangible work product produced under the artisan contracts.

**SECTION 5. TERMINATION.** At any time the parties hereto may, by written notice to the others, terminate this MOA in whole or in part either for convenience or for default. The parties fully recognize that the artist/CAHA contract, if already in effect on the date this MOA is terminated, are separate legal undertakings and must also be terminated in accordance with their own terms to give full effect to a termination of this MOA.

Upon termination of this MOA if no artist/CAHA contract has been entered into or, if they have, upon termination of such contract by either party thereto, all plans, drawings, briefs, reports, summaries, completed artwork and artwork in progress, and such other information and materials as may have been produced under either contract and utilized by either party hereto in connection with the project shall be placed in the possession of the Guam Legislature. Ownership thereof and rights of use thereto shall be determined in accordance with Section 4 hereof.

The Guam Legislature may, upon termination, retain as a set-off for such expenses or fees due to the CAHA in connection with the artist/CAHA contract any funds owed to the Guam Legislature. Artists contracted to the Guam Legislature shall be entitled, however, to be paid or reimbursed fully and promptly by the Guam Legislature for all work satisfactorily performed by them.

**SECTION 6. NOTICES.** Each party shall notify the other once it has entered into, made significant modification to, or terminated its own separate contract(s) related hereto. For the avoidance of doubt, the term *"separate contract(s)"* as used herein shall mean, with respect to its contract for other services. With respect to the DCA, the term *"separate contract(s)"* as used herein shall mean the artist/CAHA contract.

Unless during the term of this MOA a party notifies the other party in writing of a change or other address to be used, any notices or notification required or permitted to be given shall be given promptly in writing and delivered in person or by certified mail to the parties at the following addresses:

**Council of Arts and Humanities Agency**
**c/o Department of Chamorro Affairs**

**Delivery Address:**
**Attn:** Johnny G. Sablan
President
Terlaje Professional Building

**33rd Guam Legislature**
The Guam Legislature

**Delivery Address:**
**Attn:** Vincent P. Arriola
Executive Director
155 Hesler Street

1st Floor 194 Hernan Cortez Ave. Hagatna, Guam 96910
Hagåtña, Guam 96910

**Mailing Address:**
**Attn:** Johnny G. Sablan
President
P.O. Box 2950
Hagåtña, Guam 96932

**SECTION 7. MISCELLANEOUS PROVISIONS.**

**A.** This MOA is made under and shall be governed and construed in accordance with the laws of Guam, and the courts of Guam shall have jurisdiction over any and all disputes.

**B.** If any provision of this MOA shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be deemed stricken and the MOA shall be enforced according to its valid and subsisting terms and provisions.

**C.** The failure of either party to insist upon strict compliance with any term, provision, or condition of this MOA shall not be construed as a waiver of either party's rights and remedies under this MOA.

**D.** Any approval required herein by the Guam Legislature shall mean that the approval of the Executive Director of the Guam Legislature is required, unless another person is designated to issue particular or limited approvals on certain matters.

**E.** Removal of the Work commissioned through Guam's One Percent for the Arts Program must be approved by CAHA and the Selection Committee. Removal of the Work shall be at the expense of Owner.

**F.** The Guam Legislature must notify CAHA and artist prior to removal of the Work.

**G.** There must be a compelling reason to remove and/or relocate the piece of the Work to another location in the facility which meets the criteria of Guam's one percent for the arts program.

**H.** In the event that the Guam Legislature is unable to identify an alternate location for the Work that is agreeable to both CAHA and the artisan contractor by the time of removal/relocation, the Guam Legislature shall contribute the Work which is removed to the CAHA art bank.

**I.** This MOA may only be modified in writing signed by the parties.

**SECTION 8. EFFECTIVE DATE.** The terms of this MOA shall become effective on the date it is signed by the President of the DCA and shall be binding upon the parties hereto and their representatives, successors and assigns.

***IN WITNESS HEREOF,*** the parties have executed this Memorandum of Agreement effective the day and year the Governor of Guam affixes his signature.

**DEPARTMENT OF CHAMORRO AFFAIRS**

Johnny G. Sablan
President, Department of Chamorro Affairs

**GUAM LEGISLATURE**

Vincent P. Arriola
Executive Director

16-0803

Date: NOV. 21, 2016

**GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY**

Judy S. Flores
Chairman of the Board, Guam CAHA

Date: 11-23-16

**GUAM PRESERVATION TRUST**

Michael Makio
Chairman, GPT

Date: NOV. 22, 2016

**CERTIFIED FUNDS AVAILABLE: GUAM LEGISLATURE**

Date: 11-23-16

GUAM LEGISLATURE Agnes A. Cruz, Chief Fiscal Officer
Account No: 000000000000000 Acct.# 0601-025983

**APPROVED AS TO FORM & LEGALITY:**

Date: 12/15/16

Elizabeth Barrett-Anderson
Attorney General of Guam
DCA 16-0803

**APPROVED:**

Date: DEC 28 2016

Edward Baza Calvo
Governor of Guam

**Exhibit A – RFP 17-3621-004**
**See attachment.**
**[Rest of page left intentionally blank.]**

**Exhibit B – CAHA's Standard One Percent for the Arts Contract**
**See attachment.**
**[Rest of page left intentionally blank.]**

| | A | B | C | D |
|---|---|---|---|---|
| 1 | as of 3/31/2019 Percent for the Arts Guam Legislature Balance Sheet | | | |
| 2 | Expenses | Amount Owed | Amount Paid | Balance |
| 3 | | | | $75,000 |
| 4 | Mark A. Murer (4) Guam Legislature Seal | $26,000 | $26,000 | $49,000 |
| 5 | Frank Perez "I Taotao Mo 'na" | $8,730.00 | $8,730.00 | $40,270 |
| 6 | Frank Perez Fanhonge' Chamoru | $5,000.00 | $5,000.00 | $35,270 |
| 7 | Phil Card "Our People Are the Voice of the People of Guam" | $5,268.50 | $5,268.50 | $30,002 |
| 8 | Tim Hanley "The Organic Act" | $3,000 | $3,000 | $27,002 |
| 9 | Richard Castro " Latte" | $9,800.00 | $9,800.00 | $17,202 |
| 10 | GPT Newspaper Ad | $1,485 | $1,485 | $15,717 |
| 11 | CAHA for Administrative Services | $1,500 | $1,500 | $14,217 |
| 12 | | | BALANCE | $14,217 |