



CONSOLIDATED COMMISSION ON UTILITIES

Guam Power Authority • Guam Waterworks Authority
P.O.BOX 2977 • Agana, Guam 96932

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RESOLUTION NO. 2017-05

AUTHORIZING THE MANAGEMENT OF THE GUAM POWER AUTHORITY TO PROCEED WITH THE SOLICITATION TO PROCURE A CONTRACTOR FOR THE SUPPLY OF DIESEL FUEL OIL NO.2 FOR THE BASELOADS AND PEAKING UNITS

WHEREAS, the three (3) year base period for the current contract (GPA-029-14) for the Supply of Diesel Fuel Oil No.2 for the **Baseloads** (Cabras 1&2 and MEC 8&9), and the **Peaking Units** (Tenjo Vista, Fast Tracks: Manenggon and Talofof, TEMES CT and the Northern Diesel Plants: Dededo CT, Macheche CT, and Yigo CT) will expire on December 31, 2017; and

WHEREAS, the aftermath of the Cabras 3&4 incident in August 2015 drastically increased GPA's diesel consumption, overly exceeding the estimated quantities provided in Schedule B of the current contract (Exhibit A); and

WHEREAS, GPA has determined that a new solicitation is needed to reflect the necessary changes and update GPA's supply requirement (Exhibit B); and

WHEREAS, GPA intends to issue a new Invitation For Bid for the procurement of diesel fuel oil for the Baseload and Peaking Units for a base period of two (2) years, to commence on January 01, 2018 through December 31, 2019, with three (3) additional one-year extension options; and

WHEREAS, the draft bid solicitation documents for the procurement of a new diesel fuel oil supply contract is hereby attached as Exhibit C; and

WHEREAS, the total cost for the new contract is anticipated to exceed \$1.5M requiring GPA to seek authorization for this procurement from the PUC; and

1 **WHEREAS**, GPA is requesting the approval of the CCU to petition the PUC for the issuance of
2 an Invitation for Bid for a new diesel fuel oil supply contract.

3

4 **NOW THEREFORE, BE IT RESOLVED**, by the Consolidated Commission on Utilities, subject to
5 the review and approval of the Public Utilities Commission, as follows:

6

7 1. GPA's request to solicit competitive bids for a new Diesel fuel supply contract through a
8 Multi-Step Bid process is reasonable, prudent and beneficial to its customers.

9

10 2. GPA is authorized to petition the Public Utilities Commission for approval to issue bids to
11 procure a Contractor for the supply of Diesel Fuel Oil No.2 for the Baseloads and Peaking
12 Units.

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14 **RESOLVED**, that the Chairman of the Commission certifies and the Secretary of the
15 Commission attests the adoption of this Resolution.

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17 **DULY and REGULARLY ADOPTED** this 24th day of January 2017.

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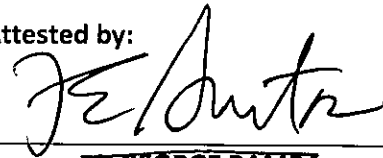
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Certified by:



JOSEPH T. DUENAS
CHAIRMAN

Attested by:



J. GEORGE BAMBA
SECRETARY

Francis E. Santos
Vice-Chairman

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3 **SECRETARY'S CERTIFICATE**


4 **I, J. GEORGE BAMBA**, Secretary for the Consolidated Commission on Utilities do hereby
5 certify that the foregoing is a full, true, and correct copy of the resolution duly adopted at a regular
6 meeting of the members of Guam's Consolidated Commission on Utilities, duly and legally held at the
7 meeting place thereof on January 24, 2017, at which meeting of all said members had due notice and
8 at which at least s majority thereof were present, and

9 At said meeting said resolution was adopted by the following vote:

10 Ayes: 4
11 Nays: 0
12 Absent: 0
13 Abstain: 1

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19 As of the date of this certification, said original resolution has not been amended, modified,
20 or rescinded since the date of its adoption, and the same is now in full force and effect.

21 **SO CERTIFIED** this 24th day of December, 2017.

22


J. GEORGE BAMBA FRANCIS R. SIA
Secretary VICE-CHAIR
Consolidated Commission on Utilities

Exhibit A:

Diesel Expenses for Current Contract

GPA-029-14 EXPENDITURES	1st year	2nd Year	3rd year	3-Year Contract Period
	(01/01/15 to 12/31/15)	(01/01/16 to 12/31/16)	(01/01/17 to 12/31/17)	(01/01/15 to 12/31/17)
Jan-Sep (Gallons)	6,253,698	28,041,799	15,376,040	
Oct-Dec (Gallons)	<u>9,133,263</u>	<u>5,125,347</u>	<u>5,125,347</u>	
Total Qty (Gallons)	15,386,962	33,167,145	20,501,386	69,055,494
Contract Estimate (Gallons)	<u>4,800,000</u>	<u>4,800,000</u>	<u>4,800,000</u>	<u>14,400,000</u>
Variance	10,586,962	28,367,145	15,701,386	54,655,494
Remarks	221% increase	591% Increase	327% Increase	380% Increase
REMARKS	Actual	Actual	Estimated	Estimated Diesel Expenses
	(Cabras 3&4 Explosion on 08/31/15)	(Cabras 3&4 Offline & forced outages in remaining plants)	(Cabras 3&4 Offline & anticipated overhauls/outages in remaining plants)	

EXHIBIT B: CHANGES TO THE CONTRACT REQUIREMENTS

SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS (Gallons/yr)

Plant Location	Name of Plant	Existing Contract (GPA-029-14)	New Contract
1. Baseloads	Cabras 1&2, MEC 8&9	200,000	100,000 – 200,000
2. Tenjo Vista	Tenjo Vista	1,500,000	5,000,000 - 7,000,000
3. Fast Tracks	Talofofo	1,000,000	3,000,000 - 4,000,000
	Manengon		
4. TEMES CT	TEMES CT	600,000	3,000,000 - 5,000,000
5. Northern Plants	Dededo CT	1,500,000	9,000,000 - 12,000,000
	Macheche CT		
	Yigo CT		
	Aggreko		
TOTAL		4,800,000	20,060,000 - 28,100,000

SCHEDULE C: 30-DAYS MINIMUM INVENTORY REQUIREMENTS (Gallons)

Plant Location	Name of Plant	Existing Contract (GPA-029-14)	New Contract
1. Baseloads	Cabras 1&2, MEC 8&9	20,000	20,000
2. Tenjo Vista	Tenjo Vista	125,000	500,000
3. Fast Tracks	Talofofo	80,000	250,000
	Manengon		
4. TEMES CT	TEMES CT	50,000	250,000
5. Northern Plants	Dededo CT	125,000	750,000
	Macheche CT		
	Yigo CT		
	Aggreko		
TOTAL		400,000	1,770,000

Invitation For Multi-Step Bid

No. GPA- -17

SUPPLY OF DIESEL FUEL OIL NO.2



- 1. BASELOAD Plants (Cabras 1&2 and MEC 8&9)**
- 2. TENJO VISTA**
- 3. FAST TRACK Plants (Manenggon and Talofoyo)**
- 4. TEMES CT Plant**
- 5. NORTHERN Plants (Dededo CT, Macheche CT, Yigo CT and Aggreko)**

Volume II

CONTRACT (DRAFT)

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CONTRACT

(CONTRACTOR)

GUAM POWER AUTHORITY

2017

IFB No. GPA- -17

SUPPLY OF DIESEL FUEL OIL NO.2

FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the ____ day of _____, 2017 by and between:

_____, hereinafter referred to as "CONTRACTOR", with its principal address at _____;

- and -

GUAM POWER AUTHORITY, hereinafter referred to as the "Authority" or "GPA", a Public Corporation with its office located at the Gloria Nelson Public Service Complex, Fadian Mangilao Guam;

RECITALS

WHEREAS, the current contract for the supply of Fuel Oil will expire on December 31, 2017; and

WHEREAS, GPA sought to procure a new **CONTRACTOR** for the supply of Fuel Oil to the following plants locations: **Baseloads** (Cabras 1&2 and MEC 8&9), **Tenjo Vista**, **Fast Tracks** (Manenggon & Talofof), **TEMES CT**, and **Northern Plants** (Dededo CT, Macheche CT, Yigo CT, and Aggreko); and

WHEREAS, GPA issued an Invitation For a Multi-Step Bid for the Supply of Diesel Fuel Oil No.2 under IFB GPA- -17; and

WHEREAS, **CONTRACTOR** submitted a bid in response to the Invitation for Bid for the Supply of Diesel Fuel Oil No.2; and

WHEREAS, **GPA**, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the lowest responsive and responsible bidder for the following GPA plant locations: _____; and

WHEREAS, the Guam Consolidated Commission on Utilities (CCU) and the Guam Public Utilities Commission (PUC) has determined that the **CONTRACTOR** is the preferred option for **GPA** to supply the Fuel oil requirements for the Authority for those plant locations.

NOW, THEREFORE, in consideration of the above premises and the mutual promises set forth herein and the terms and conditions hereinafter set forth and for other good and valuable consideration, receipt of which is hereby acknowledge; **CONTRACTOR** and **GPA** hereby agree as follows:

SECTION 1. DEFINITIONS

“\$” refers to currency in U.S. dollars.

“ASTM” means the American Society for Testing and Materials, a recognized organization providing globally- accepted standard testing and evaluation methods for petroleum.

“API” means the American Petroleum Institute, a recognized- organization providing globally accepted petroleum procedures.

“**Barrel**” means a volume equivalent to 42 U.S. Gallons.

“**Contract**” means this written agreement between **GPA** and **CONTRACTOR** covering the Supply of Fuel oil and any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

“**Contract Documents**” means the Contract, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in the Contract, together with all Modifications issued after execution of the Contract.

“**Contracting Officer**” means the General Manager of the **GPA** and shall include his authorized representatives.

“**CONTRACTOR**” means the party which has duly entered into this Contract with **GPA** to perform the work herein contemplated or his or their authorized assignee.

“**Day**” means a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

“**Month**” means a calendar month.

“**Year**” means a calendar year.

“**Delivery Time**” means the total number of hours or days or the dates stated in this Agreement for furnishing the Fuel Oil.

“**General Manager**” means the Chief Executive Officer of **GPA**. The office and title of General Manager shall apply to any person acting in a regular or in an acting capacity as the Chief Executive Officer of **GPA**.

“**Notice**” means and includes all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with Contract requirements. Any written notice by either party to the Contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his,

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their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box and file the same with the Contracting Officer.

“**Procurement Officer**” means the General Manager or the General Manager’s designee.

“**PURCHASER**” means GPA.

“**Seller**” means the **CONTRACTOR**.

“**Territory**” means the Territory of Guam.

“**OPA’90**” means the Oil Pollution Act of 1990 enacted by the U.S. Congress.

“**Platt’s Asia-Pacific/ Arab Gulf Marketscan**” refers to the source document for the Fuel Oil Contract pricing.

“**Metric Ton**” means unit of mass equal to 1,000 kilograms (2,205 pounds)

“**Fuel Oil**” means a liquid hydrocarbon product satisfying the specifications in [Section 8](#) and [Schedule A](#).

“**Gallon**” means a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.

“**Receiving facility**” means the GPA Fuel Oil receiving facility at each plant location identified in [Schedule B](#).

“**CCU**” means the Guam Consolidated Commission on Utilities.

“**PUC**” means the Guam Public Utilities Commission.

“**COQ**” means Certificate of Quality or Quality Certificate, a formal document recording the CONTRACTOR’s laboratory determination of quality of a particular sample which represents a specific delivery, said laboratory determinations having been performed in accordance with the test methods specified in Schedule A.

“Independent Inspector” means a qualified third-party petroleum inspection contractor acceptable to both parties providing petroleum sampling, measurement and other services before, during and after a delivery.

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“Receiving Facility” means any of GPA’s generating facilities, storage facilities and/or other facilities used to receive, transport, store, or otherwise handle the Diesel, and/or ULSD located on the island of Guam as designated by GPA.

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“ULSD” means Ultra-Low Sulfur Diesel produced in conformity with the provisions of the quality in the Specification which are set forth in Schedule A.

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SECTION 2. FUEL OIL TO BE SUPPLIED

CONTRACTOR agrees to furnish and GPA agrees to accept and pay for all of GPA's Fuel Oil requirements for power generating plants in Guam identified in Schedule B for the term of the Contract. The **estimated** total Fuel Oil requirement is listed in Schedule B. This information is provided as reference material only. Although every attempt has been made to ensure its accuracy, GPA makes no guarantees that these quantities will be achieved but they may be exceeded. GPA expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data provided.

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Actual quantities may vary depending on the dispatching of the plants. The estimated Fuel Oil requirement provided herein are only approximate values and is subject to change. GPA shall reasonably notify the Contractor for any changes in the estimated fuel oil requirements.

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The first delivery of Fuel Oil pursuant to the Contract is anticipated to be on or about **January 01, 2018**.

SECTION 3. CONTRACT TERM

The Contract term shall be for two (2) years to commence on January 01, 2018 and shall continue until midnight of December 31, 2019 and with **GPA’s option** to extend the contract for three (3) additional one (1) year terms, renewable annually, with mutual agreement of both parties.

SECTION 4. CONTRACT PRICE

The **CONTRACT PRICE** in U.S. dollars per Gallon (\$/gal) for all Fuel Oil delivered to **GPA** shall be inclusive of all costs and liabilities required to fulfill the contract. The **CONTRACT PRICE** is the sum of the **FIXED SERVICE FEE** plus the **REFERENCE PRICE**.

The **CONTRACT PRICE** shall increase or decrease on a cent-for-cent basis with the **REFERENCE PRICE**.

The **REFERENCE PRICE** for the Fuel Oil delivered in any month shall be the mean average of the previous month's daily Mid-of-Platts (MOPS) price postings. MOPS is the average of high and low price assessments reported in the Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The **FIXED SERVICE FEE** for all Fuel Oil delivered to certain GPA Plants identified on Schedule B hereto shall be as follows:

FIXED SERVICE FEE	2-year Base Period		3-Year Extension Options		
	1 st year	2 nd year	1 st yr Extn	1 st yr Extn	3 rd yr Extn
	\$/gallon (in 3 decimals)	\$/gallon (in 3 decimals)	\$/gallon (in 3 decimals)	\$/gallon (in 3 decimals)	\$/gallon (in 3 decimals)
1. Baseload Plants					
2. Tenjo Vista					
3. Fast Track Plants (Manenggong & Talofoto)					
4. TEMES CT					

5. Northern Plants (Dededo CT, Macheche CT, Yigo CT & Aggreko)					
--	--	--	--	--	--

Sample calculation of **CONTRACT PRICE**:

Delivery Month: November 2016

(1) Sample Calculation of **REFERENCE PRICE**:

REFERENCE PRICE= Average of Previous Month's Daily MOPS

Previous Month: October 2016

Average of the Daily MOPS for October 2016: \$61.660 per Barrel

Average Price: \$1.468 per Gallon (rounded to three decimal places)

REFERENCE PRICE for November 2016: \$1.468 per Gallon

(2) Sample **FIXED SERVICE FEE**:

FIXED SERVICE FEE= \$0.192 per Gallon (sample price)

(3) **CONTRACT PRICE**

CONTRACT PRICE = Reference Price + Fixed Service Fee

CONTRACT PRICE = (\$1.468 + \$0.192) per gallon

CONTRACT PRICE = \$1.660 per gallon

This is the **CONTRACT PRICE** for fuel delivered to GPA for the sample month.

SECTION 5. FUEL OIL DELIVERY

All Fuel Oil must be delivered to the plant sites covered in this Contract. Title to the Fuel Oil shall pass from the **CONTRACTOR** to **GPA** when the Fuel Oil has passed the **GPA** pipeline flange connecting the tanker truck delivery hose and the **GPA** storage tanks. The **CONTRACTOR** shall be

available to deliver the Fuel Oil to the point of delivery as designated by GPA within twenty-four (24) hours notice or less of receiving a request. CONTRACTOR must be available to receive and accept delivery requests daily, including weekends and holidays. The CONTRACTOR shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver Fuel Oil to GPA storage tanks to the height of 45 feet. Fuel Oil deliveries shall be on an "on call" basis. CONTRACTOR must closely coordinate with the plants and shall exercise its best efforts to deliver Fuel Oil to GPA to meet operational requirements regardless of the estimates provided by GPA.

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All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil shall be on the CONTRACTOR.

SECTION 6. TERMS OF PAYMENT

Invoices for Fuel Oil delivered pursuant to quantity (Fuel Oil receipts) and quality prescribed under the terms of this contract shall be submitted no more frequently than weekly, based on the number of Gallons of Fuel Oil delivered to GPA during the preceding period. The invoices must be supported by Fuel Oil receipts or receiving tickets including a receipt acknowledgement from a GPA representative. The payment terms are 30 days (net) beginning on the date the invoice is received by the GPA accounts payable section. All payments shall be based on the delivered quantity, corrected to volume (net) at 60 °F.

SECTION 7. WARRANTY AND CLAIMS

CONTRACTOR shall represent and warrant as follows:

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a. Ability to Supply.

CONTRACTOR shall commit to supply Product that warrants that the Fuel Oil shall meet the specification prescribed under Section 8 and Schedule A herein and other pertinent sections. If the Fuel Oil fails to meet the specifications herein, CONTRACTOR shall be liable for any direct damages resulting therefrom.

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b. Ability to Deliver.

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CONTRACTOR shall own, lease or have the right to use tanker trucks, storage tanks, and other facilities sufficient to meet CONTRACTOR's obligations under this Contract,

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CONTRACTOR shall be solely responsible for any damages caused by the CONTRACTOR or its agents during the process of Fuel Oil supply and delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of its negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery of Fuel Oil as specified in [Section 4](#).

SECTION 8. PRODUCT AND QUALITY

Test Methods shall be in conformance with the prescribed procedures set forth by the American Society for Testing and Materials (ASTM) Standards for Petroleum Products, Lubricants, and Fossil Fuels, or alternative tests acceptable and subject to prior authorization by **GPA**.

The Fuel Oil delivered to **GPA** shall have the physical and chemical characteristics as described in [Schedule A](#).

Quality determination shall be performed and certified by an independent third party laboratory facility acceptable to **GPA**. Certificate of Quality (COQ) shall be representative of the product in the **CONTRACTOR'S** storage facility in Guam.

SECTION 9. QUANTITY AND QUALITY ASSURANCE

CONTRACTOR'S 'Terminal Loading Rack' meters shall be utilized to determine the quantity of Fuel Oil delivered **by tanker truck** to **GPA** and shall be the basis for the Bill of Lading (BOL). **CONTRACTOR** shall have such meters calibrated no less than annually and shall furnish **GPA** a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date.

In the event of a dispute over the accuracy of the **CONTRACTOR'S** meters, an independent third party mutually agreeable to both parties will be brought in to perform a recalibration. In the event of a miscalibration, the costs shall be borne by the **CONTRACTOR**. Any loss incurred by **GPA** as a result of miscalibration of meters shall be negotiated and returned to **GPA**.

Quantity shall be corrected to the volume at sixty degrees Fahrenheit. Conversion shall be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B (latest edition).

Appropriate Certificate of Quality (COQ) reports shall also accompany each delivery and must be presented to the **GPA** receiving facility. Quality must conform with the requirements specified under [Section 9](#) and [Schedule A](#) as a condition for acceptance of delivery.

In the event of a dispute over the quality of Fuel Oil received by **GPA**, an inspection of Fuel Oil will be conducted by an appointed third party inspector mutually acceptable to **GPA** and the **CONTRACTOR**.

CONTRACTOR is required to install security seals on valves and compartments of the delivery tanker trucks after Fuel Oil loading is completed. Seals shall remain intact upon inspection by the **GPA** receiving facility. Seal numbers shall be recorded in the delivery receipt and initialed by an authorized terminal representative. **GPA** reserves the right to reject deliveries with tampered or missing seals.

CONTRACTOR shall provide a comprehensive summary of the Fuel Oil delivery reports. **CONTRACTOR** shall tailor its reports to **GPA's** needs. **CONTRACTOR** shall submit copy(ies) of all Certificates of Quality (COQ) for the delivery month. Reports shall be submitted to the **GPA** within five (5) working days after each report month. **CONTRACTOR** shall also submit other reports and/or documentations that is relevant to the contract as may be required by the Authority.

SECTION 10. QUANTITY DETERMINATION

In the event of the variances between the BOL quantity and the **GPA** receipts, The **AUTHORITY** shall pay (absorb) a quantity shortfall up to ONE-FOURTH (0.25 %) of the gallons established quantity; shortages beyond the 0.25% tolerance shall be covered by the **CONTRACTOR**.

GPA reserves the right to require the intervention of a third party independent inspector for quantity determination. Such inspector shall be mutually acceptable to **GPA** and the **CONTRACTOR**. All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable.

Quantity certification prepared by independent inspector shall be final and binding upon both parties.

SECTION 11. SECURITY OF SUPPLY

CONTRACTOR is required to maintain a minimum of thirty (30) days inventory at the

CONTRACTOR'S ~~own~~-Guam storage facility. A list of the plant requirements is listed in Schedule C.

For security of supply in the event of unexpected, unplanned or forced baseload outages, severe typhoon or other calamities, **CONTRACTOR** shall prioritize delivery to **GPA** and guarantee uninterrupted supply of Fuel Oil up to the maximum daily consumption for each plant location as listed in Schedule D, during the recovery period.

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CONTRACTOR reserves the right to supply Fuel Oil meeting **GPA** quality specifications from any source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 4 above.

CONTRACTOR must submit a month-end Fuel Oil inventory report to **GPA**.

GPA reserves the right to audit the **CONTRACTOR** for safety fuel inventory stock compliance. Such audit shall be in accordance with generally accepted accounting practices.

SECTION 12. GOVERNMENT LAWS AND REGULATIONS

(a) If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of Fuel Oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use its best efforts to furnish **GPA** substitute Fuel Oil which complies with such governmental laws and regulations at the same price set out herein, or if unreasonable, at a price to be renegotiated by the parties. If the substitute Fuel Oil causes an increase or decrease in **CONTRACTOR**'s cost of performance of the Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim of **CONTRACTOR** for adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute Fuel Oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes" (Section 20). However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract Fuel Oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the

parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute Fuel Oil, and **CONTRACTOR** refuses to provide such substitute Fuel Oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources Fuel Oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

(b) **CONTRACTOR** shall at all times comply with all applicable laws and regulations of the Territory of Guam and the Federal Government and their respective agencies.

SECTION 13. PERMITS AND RESPONSIBILITIES

The **CONTRACTOR** shall, without additional expense to **GPA**, be responsible for obtaining any necessary licenses and permits, and for complying with any applicable Federal and Territorial laws, codes and regulations necessary for performance of the Contract by **CONTRACTOR**.

SECTION 14. FORCE MAJEURE

No failure or omission by either party to carry out or to observe any of the terms, provisions or conditions of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim by one party against the party in question or be deemed to be a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of the party, including but without prejudice to the generality of the foregoing:

- (a) War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints. Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation. Expropriation, requisition, confiscation or nationalization;
- (d) Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefor;

- (e) Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss of Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents. Accidents to or adjuncts of shipping navigation;
- (i) Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government. Unavailability of Fuel Oil because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

No failure or omissions to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract from the time of and to the extent occasioned by the Force Majeure, not from the date of notice of the Force Majeure is received.

SECTION 15. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in Section 14, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

SECTION 16. PAYMENT REQUIRED

Notwithstanding the provisions of [Section 14](#), supra, **GPA** shall not be relieved of any obligation to make payments for any Fuel Oil delivered to Guam dock/**GPA** tanks hereunder; however, during the force majeure condition the obligation shall be suspended, except for Fuel Oil deliveries made prior to the force majeure condition.

SECTION 17. PRORATION OR EQUITABLE ALLOCATION

If any of the events enumerated in [Section 14](#), supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of Fuel Oil **CONTRACTOR** have available for delivery at the time of the occurrence or for the duration of such event taking into account **GPA's** unique situation as Guam's total dependence on Fuel Oil. **CONTRACTOR** shall also seek an alternative source of Fuel Oil to fulfill its contractual obligations.

SECTION 18. ALTERNATE SUPPLY

CONTRACTOR reserves the right to supply Fuel Oil meeting **GPA** specifications from any alternate source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in [Section 4](#) above.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of [Section 14](#), supra, or if there is a sudden, unexpected increase in fuel demand that **CONTRACTOR** will be unable to supply at the time needed, **CONTRACTOR** shall seek an alternative source of Fuel Oil so long as such condition shall exist.

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In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on the part of the **CONTRACTOR**, **CONTRACTOR** shall seek an alternative source of Fuel Oil so long as such condition shall exist, without additional cost to **GPA**.

GPA may at its sole discretion seek an alternative source of Fuel Oil so long as such condition of negligence shall exist. If the cost of Fuel Oil during such period of negligence shall exceed the

Comment [ANF1]: 1. Contractor becomes negligent if they do not comply with last sentence of the 2nd paragraph.
2. Additional verbiage may be needed to be able to implement this clause without violating the Contract or any Procurement Law.

Contract price as provided in [Section 4](#), the **CONTRACTOR** shall be liable to **GPA** for the **difference**, which may be taken from the Performance Bond.

Comment [ANF2]: Do we need to include any damages?

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SECTION 19. RESUMPTION OF PERFORMANCE

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any Fuel Oil to be sold under the Contract for the reasons which fall within the provisions of [Section 14](#), supra, then the party so prevented shall, as to the remainder of the Fuel Oil not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in [Section 14](#), supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 20. GOVERNING LAW AND DISPUTES

- (a) All controversies between **GPA** and the **CONTRACTOR** which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement, shall be decided by **GPA** pursuant to Guam Procurement laws and regulations.
- (b) **CONTRACTOR** may pursue applicable remedies under the Guam Procurement Law and regulations and the Government Claims Act.
- (c) The **CONTRACTOR** shall comply with any decision of **GPA** and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract; provided, however, that in any event the **CONTRACTOR** shall proceed diligently with the performance of the Contract where the General Manager of **GPA** has made a written determination that continuation of work under the Contract is essential to the welfare of the Territory.

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified. The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the

resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The **CONTRACTOR** agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims including but not limited to, claims for consequential, special or punitive damages. Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The **CONTRACTOR** waives all rights against **GPA** to claim consequential, special or punitive damages.

SECTION 21. CONTRACTOR'S INSURANCE

CONTRACTOR shall not commence work under this Contract until he has obtained all insurance required under this section and such insurance has been approved by **GPA**, nor shall the **CONTRACTOR** allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to **GPA** within the period prescribed by **GPA**. All updates or revisions after contract commencement shall also be forwarded to **GPA**.

Failure on the part of the **CONTRACTOR** to provide the required documents and/or to enter into a contract with **GPA** shall be sufficient grounds for the annulment of the award. **GPA** may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified **BIDDER**.

- A. WORKMEN'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE:** The **CONTRACTOR** shall take out and maintain during the life of this Contract the applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance and in the applicable State or Territory covering all his employees, and in the case of any work sublet, the **CONTRACTOR** shall require the Subcontractor similarly to provide statutory Workmen's Compensation Insurance for the latter's employees. The **CONTRACTOR** shall secure and maintain, during the life of this Contract, Employer's Liability Insurance with a limit of \$500,000 with an insurance company authorized to write such insurance in all states or territories where the Contractor will have employees located in the performance of this Contract. **CONTRACTOR** shall

provide a Waiver of Subrogation in favor of GPA via endorsement to the Workers Compensation policy.

B. COMMERCIAL GENERAL LIABILITY:

1. The **CONTRACTOR** shall maintain, during the life of this Contract, such Commercial General Liability as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this Contract whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided Liability Insurance shall be as follows:

Bodily Injury Limits:	\$ 1,000,000 Each Person
Property Damage Limits:	\$ 1,000,000 Each Occurrence
	\$ 2,000,000 Aggregate

2. The Commercial General Liability required by the preceding Subparagraph 1 shall include the following extensions of coverage:

- (a) The property damage coverage shall include a Broad Form Property Damage Endorsement.
- (b) Contractual Liability coverage shall be included.
- (c) Protective Liability coverage shall be included to protect the **CONTRACTOR** against claims arising out of operations performed by his Subcontractors.
- (d) Products Liability and/or Completed Operations coverage shall be included.
- (e) GPA shall be an additional insured on Commercial General Liability policy.
- (f) **CONTRACTOR** shall grant Waiver of Subrogation in favor of GPA.

C. AUTOMOBILE LIABILITY INSURANCE:

The **CONTRACTOR** shall take out and maintain during the life of the Contract, such Automobile Liability insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for him in any

capacity in connection with the carrying out of this Contract. GPA shall be an additional insured on Auto Liability policy. CONTRACTOR will grant Waiver of Subrogation in favor of GPA. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits: \$ 1,000,000 Each Person
 \$ 1,000,000 Each Occurrence

Property Damage Limits: \$ 1,000,000 Each occurrence

D. POLLUTION LIABILITY INSURANCE:

The CONTRACTOR shall take out and maintain during the life of the Contract, Pollution Liability Insurance with minimum limits of \$5,000,000 that provides coverage for third party bodily injury, third party property damage, and clean-up cost whether ordered by a government entity or not ordered by a government entity. Grant waiver of subrogation in favor of GPA. GPA is to be an additional insured.

E. EXCESS LIABILITY

Excess Liability with limits of \$5,000,000. GPA shall be an additional insured. CONTRACTOR shall grant Waiver of Subrogation in favor of GPA.

F. CERTIFICATE OF INSURANCE:

The CONTRACTOR shall furnish GPA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph C., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give GPA at least thirty (30) days written notice in the event of cancellation of or material change in any of the policies. If coverage on said certificate(s) is shown to expire prior to completion of all terms of this Contract, the CONTRACTOR shall furnish a Certificates of Insurance evidencing renewal of such coverage to GPA. The Certificates of Insurance shall clearly show this Contract number.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to **GPA** as part of the bid requirements. All updates or revisions after contract commencement shall also be forwarded to **GPA**.

G. SUBCONTRACTOR'S INSURANCE:

The **CONTRACTOR** shall require each of his Subcontractors to take out and maintain during the life of his Subcontract, the same insurance coverage required of the **CONTRACTOR** under Paragraphs B, C, D, E, and F above, including the extensions of coverage required under Paragraph C., Subparagraph 2, above. Each Subcontractor shall furnish to the **CONTRACTOR** two (2) copies of a Certificate of Insurance and such certificate shall contain the same information required in Paragraph C. above. The **CONTRACTOR** shall furnish one (1) copy of the certificate to **GPA**.

H. INSURANCE COMPANY AND AGENT:

All insurance policies herein required of the **CONTRACTOR** shall be written by a company duly authorized to do business in the Territory where supply under this Contract is being performed and be executed by some agent thereof duly licensed as an agent in said State or Territory.

SECTION 22. INDEMNITY

CONTRACTOR shall indemnify and hold **GPA** harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by **CONTRACTOR** or its agents in making deliveries hereunder. **CONTRACTOR** shall be responsible for cleaning up any Fuel Oil spillage caused by it or its agent or **CONTRACTORS** during the process of Fuel Oil delivery. **CONTRACTOR** shall carry at all times appropriate levels of insurance as determined by **GPA** to cover any such damage. The **CONTRACTOR** shall ensure that any transportation owned or leased by the Contractor for deliveries under this agreement shall meet the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90).

SECTION 23. TRANSPORTATION

CONTRACTOR shall arrange for the transportation of the Fuel Oil to **GPA**.

All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil to shall be on the **CONTRACTOR**.

CONTRACTOR's and **GPA**'s rights and duties under Section 22 and Section 23 do not supersede or control the provisions of Section 14 Force Majeure.

SECTION 24. FAILURE TO SUPPLY

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of Fuel Oil supply or commits any other substantial breach of this Contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within THIRTY (30) days of the date of notification, **GPA** may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, **GPA** reserves the right to procure Fuel Oil supply from another source immediately upon issuance of such notification or whenever it deems appropriate.

SECTION 25. FAILURE TO PAY

Failure to pay an invoice and any late penalties, if any, within a period of THIRTY (30) days from the due date of such invoice, shall be a default and should such a default not be cured within THIRTY (30) days of default, **CONTRACTOR** may, at its option, do either of the following:

- (a) Terminate the Contract forthwith or forthwith suspend delivery under the Contract until further notice, on notifying **GPA** orally or by notice in writing; or
- (b) Continue to supply Fuel Oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 26. FAILURE TO COMPLY WITH LAWS

In the event the **CONTRACTOR** or any person or entity identified as principals in the offer submitted in connection with the bid shall be found by any court or administrative agency having jurisdiction over the subject matter of the violation, to have violated any law, rule or regulation in connection with **CONTRACTOR**'s performance of the obligations under the Contract in any manner whatsoever directly or indirectly which violation shall constitute a breach of the peace, or an

act involving moral turpitude or otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon THIRTY (30) days written notice.

SECTION 27. DEFAULT

If a PARTY refuses or fails to perform any of its obligations under this Contract, the non-breaching PARTY shall notify the PARTY either by e-mail or in writing within thirty (30) days of the breach. If the PARTY does not remedy the breach within thirty (30) days after the date of notification, non-breaching PARTY may by giving notice to the other PARTY terminate the Contract in whole or suspend taking of delivery under the Contract.

In the event of partial termination or suspension under this provision, **GPA** reserves the right to procure Fuel Oil supply from another source upon notification to **CONTRACTOR** either by e-mail or in writing. Fuel Oil to be procured shall be at the prevailing market price at the time of partial termination or suspension.

In the event of termination because of **GPA's** default, the **CONTRACTOR** shall not be liable for the difference between the Contract price and the prevailing market price at the time of termination.

SECTION 28. ATTORNEYS FEES

Should a default by either party result in litigation, the successful party shall be entitled to recover its reasonable attorney's fees from the defaulting party.

SECTION 29. TERMINATION FOR CONVENIENCE

(a) **Termination.**

The delivery of Fuel Oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of Fuel Oil under the Contract is terminated, and the Contract shall be terminated effective ~~THREE HUNDRED SIXTY FIVE (365)~~ NINETY (90) days after receipt of notice by **CONTRACTOR**.

Comment [ANF3]: 365 days may be too restrictive for GPA

In the case of termination of this Contract, GPA shall reimburse the CONTRACTOR of all the expenses related to the period of the Performance Bond that were not used.

(b) **CONTRACTOR'S OBLIGATIONS.**

The CONTRACTOR shall incur no further obligations in connection with the terminated Fuel Oil supply and delivery and on the date set in the Notice of Termination the CONTRACTOR will stop delivery of Fuel Oil to the extent specified. The CONTRACTOR shall also terminate outstanding orders and Contracts, if any, as they relate to the terminated Contract for Fuel Oil supply. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of orders and Contracts, if any, connected with the terminated Fuel Oil supply. GPA may direct the CONTRACTOR to assign the CONTRACTOR'S right, title and interest under the terminated orders or Contracts to GPA. The CONTRACTOR must still deliver Fuel Oil where supply is not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) **Compensation.**

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience. If the CONTRACTOR fails to file a termination claim within ONE (1) year from effective date of termination, GPA may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) GPA and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403 (Cost or Pricing Data) of the Guam Procurement Regulations and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by GPA, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code of Guam, and the Contract price of the Fuel Oil supply not terminated.
- (3) Absent complete agreement under subparagraph (2) of this paragraph, GPA may pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
 - (i) Fuel Oil Contract prices for supplies or services accepted under the Contract by GPA;

(ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fuel Oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted Fuel Oil supplies or services; provided, however, that if it appears that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;

(iii) Costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;

(iv) The reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract for the termination and settlement of Contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total Contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial Code.

SECTION 30. REMEDIES CUMMULATIVE

Each and all remedies available to a party in the event of the other party's failure to comply timely with any or all the terms and conditions of the Contract may be exercised independently or in combination (such rights being nonexclusive one with the other). The remedies set forth in the Contract are in addition to, and not in lieu of, all of the remedies available at law or in equity.

SECTION 33. INTEREST OF OTHER PARTIES

CONTRACTOR warrants that no member of the governing body of **GPA**, and no other officer, employee, or agent of **GPA** who exercises any functions or responsibilities in connection with the work to which the Contract pertains, and no employee, agent or member of the Guam Legislature or other public official of the Government of Guam, has or shall have any personal economic or financial interest, direct or indirect, in the Contract.

SECTION 34. ASSIGNMENT

CONTRACTOR declares that the only persons or parties interested in the Contract as principals are named herein and that the Contract is made without participation by or benefit to any other person, firm or corporation, except as specified herein.

CONTRACTOR agrees that it will not assign to nor permit Contract participation in whole or in part by any other person, firm or corporation not specified as a principal without the prior written consent of **GPA**. If such assignment is permitted, **CONTRACTOR** will guarantee the performance of all terms and obligations of the Contract, and such assignment shall not alter **CONTRACTOR**'s obligations hereunder. No assignee of **CONTRACTOR** shall have the right to assign the Contract without **GPA**'s consent which may be given or refused at **GPA**'s absolute discretion.

CONTRACTOR and **GPA** shall not transfer or assign its rights and obligations under this contract, in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, the **CONTRACTOR** may transfer or assign its rights and obligations under this contract, in whole or in part, to a US based affiliate (as defined hereinafter), with ninety (90) days prior notice to and at the consent of **GPA**. For the purpose of this contract, "US based affiliate" means any company or legal entity based in the United States of America which (a) controls either directly or indirectly a party hereto, or (b) is controlled directly or indirectly by such party, or (c) is directly or indirectly controlled by a company or entity which directly or indirectly controls such party. "Control" for purposes of the previous sentence means the ability to direct the management and policies of a company or legal entity, whether through ownership of securities, by contract or otherwise.

SECTION 35. TIME

Time is of the essence in the Contract and in every part hereof.

SECTION 36. SPECIFICATIONS

Should GPA wish to alter any of the specifications set out in Section 8 and Schedule A, method and terms of delivery, for good cause, it shall give written notice to CONTRACTOR within thirty (30) days. If such changes cause an increase or decrease in CONTRACTOR's cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by CONTRACTOR for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by CONTRACTOR of the notification of changed specifications. CONTRACTOR and GPA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If CONTRACTOR and GPA fail to agree on the adjustment to be made within thirty (30) days after CONTRACTOR receives notice of altered specifications, or if CONTRACTOR is unwilling to meet the altered specifications, the parties shall be subject to the provisions under Section 20 (Governing Law and Disputes) clause. However, nothing in this clause shall excuse the CONTRACTOR from proceeding with the Contract Fuel Oil specifications as changed.

SECTION 37. AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought. For purposes of this Contract, the signature of the Chairman or his designee, of the Consolidated Commission on Utilities is required to bind GPA.

Failure by either party to object to any failure of performance by the other party of any provision of the Contract shall not constitute a waiver of, or estoppel against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppel with respect to any succeeding failure of performance.

SECTION 38. DESCRIPTIVE HEADINGS

The descriptive headings of the several sections and subsections in this Contract are inserted for convenience only and shall not be deemed to affect the meaning or construction of any provision hereof.

SECTION 39. RELATIONSHIP OF PARTIES

Nothing contained in the Contract shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between **CONTRACTOR** and **GPA**, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between **GPA** and **CONTRACTOR**, other than the relationship of buyer and seller.

SECTION 40. NUMBER AND GENDER

In the Contract the masculine gender includes the feminine and neuter, the singular number includes the plural, and the word "person" includes corporation, partnership, firm or association wherever the context so requires.

SECTION 41. SUCCESSORS IN INTEREST

Each and all of the covenants, conditions, and restrictions in the Contract shall inure to the benefit of and shall be binding upon the permitted assignees and successors in interest of either party.

SECTION 42. PARTIAL INVALIDITY

Should any part of the Contract for any reason be declared to be invalid, such decision shall not affect the validity of any remaining portion thereof, which remaining portion shall remain in force and effect as if the Contract had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of the Contract without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid.

SECTION 43. EQUAL OPPORTUNITY CLAUSE

During the performance of the Contract the **CONTRACTOR** agrees as follows:

(a) The **CONTRACTOR** will not discriminate against any employee or applicant for employment because of race, color, religion, sex, political opinion or affiliation, or national origin. The **CONTRACTOR** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, political opinion or affiliation, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demoting, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The **CONTRACTOR** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the **GPA** setting forth the provisions of this equal opportunity clause.

(b) The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 44. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY.

5 GCA §5630(c) prohibits the **CONSULTANT** against gratuities, kickbacks, and favors to the Territory.

SECTION 45. RESTRICTIONS AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

5 GCA §5253(b) restricts the **CONTRACTOR** against employing convicted sex offenders from working at Government of Guam venues. It states:(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the **CONTRACTOR** has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the

CONTRACTOR is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

SECTION 46. CONTRACT BINDING EFFECT

All EXHIBITS attached hereto are incorporated herein by reference in its entirety.

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB-GPA- -17**. This Contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

For the **Guam Power Authority (GPA)**:

John M. Benavente, P.E.
General Manager

DATE

For **(CONTRACTOR)**: _____.

(Company Seal)

CONTRACTOR, Duly Authorized
REPRESENTATIVE OF COMPANY

DATE

APPROVED AS TO FORM:

**Graham Botha, Legal Counsel
GUAM POWER AUTHORITY**

DATE

SCHEDULE A: PRODUCT QUALITY SPECIFICATION

DIESEL FUEL Oil No. 2 ^A

Property	ASTM Test Method ^B	Alternate Method ASTM	Unit of Measure	Limits
Flash Point	D93		°C	55 Min
Water & Sediment	D2709		% vol	0.05 Max
Distillation Temp, °C 90% recovered	D86		% vol	282 Min 360 Max
Kinematic Viscosity	D-445		mm ² at 40°C	1.9 Min 4.1 Max
Ash	D482		% mass	0.01 Max
Sulfur	D5453	D-7039	ppm (µg/g)	12 Max
Copper Strip Corrosion Rating (3hrs min at 50°C)	D130			No.1 Max
Cetane Index	D 613	D976-80 D 4737		46 Min
Aromaticity	D1319		% vol	15 Min 35 Max
Micro Carbon Residue on 10% distillation residue	D524	D4530 D6371	% mass	0.20 Max
Lubricity, HFRR @ 60°C	D6079		Micron	400 Max
Conductivity	D2624	D4308	pS/m	50 Min
Density @ 15°C	D1298	D4052	Kg/m ³	820 Min 850 Max
Gravity, API @ 60°F	D1295	D4052		35 Min 41 Max
Color	D1500		ASTM	2.0 Max
Strong Acid No.	D974		mg KOH/g	NIL
Total Acid No.	D974		mg KOH/g	0.4 Max
Stability (Oxidation), 16Hrs	D2274		mg/L	25 Max
Appearance @ ambient temp	Visual			Report
Guaranteed Heating Value (HHV)	D240		MMBTU/bbl	5.70 Min

Comment [ANF4]: Limits for adjusted providing allowance to critical parameters to ensure results will still meet ASTM requirements in the event of discrepancies of test results between loadport & discharge port.

Comment [ANF5]: Increased from 52

Comment [ANF6]: Reduced from 15

Comment [ANF7]: Reduced from 460

Comment [ANF8]: Increased from 25

Comment [ANF9]: Reduced from 0.5

^A Follows the minimum requirements for **Ultra-Low Diesel Fuel Oils (ULSD)** listed under ASTM 975-10.

^B These test methods are specified in 40CFR Part 80. Test methods must follow the latest version.

^C Appearance must be clear at ambient temperature and free from undissolved water and sediment.

The Authority may require the supplier to conduct additional test as may be required for plant's performance/efficiency evaluation.

SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS

This information is provided as reference material only. Although every attempt has been made to ensure it accuracy, GPA makes no guarantees that these quantities will be achieved but they may be exceeded. GPA expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data provided.

Plant Location	Name of Plant	Estimated Annual Requirement (Gallons per Year)
1. Baseloads	Cabras 1&2, MEC 8&9	100,000 – 200,000
2. Tenjo Vista	Tenjo Vista	5,000,000 - 7,000,000
3. Fast Tracks	Talofofa	3,000,000 - 4,000,000
	Manengon	
4. TEMES CT	TEMES CT	3,000,000 - 5,000,000
5. Northern Plants	Dededo CT	9,000,000 - 12,000,000
	Macheche CT	
	Yigo CT	
	Aggreko	
TOTAL		20,060,000 - 28,100,000

Actual quantities may vary depending on the dispatching of the plants. The estimated Fuel Oil requirement provided herein are only approximate values and is subject to change. GPA shall reasonably notify the Contractor for any changes in the estimated fuel oil requirements.

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SCHEDULE C: 30-DAYS MINIMUM INVENTORY REQUIREMENTS

Plant Location	Name of Plant	30-days Minimum Inventory Requirements (Gallons)
1. Baseloads	Cabras 1&2, MEC 8&9	20,000
2. Tenjo Vista	Tenjo Vista	500,000
3. Fast Tracks	Talofofa	250,000
	Manengon	
4. TEMES CT	TEMES CT	250,000
5. Northern Plants	Dededo CT	750,000
	Macheche CT	
	Yigo CT	
	Aggreko	
TOTAL		1,770,000

The estimated Fuel Oil requirement provided herein is subject to change. GPA shall reasonably notify the **CONTRACTOR** for any changes in the Fuel Oil requirements.

SCHEDULE D: PLANT CONSUMPTION AT MAXIMUM CAPACITIES

Plant Location	Name of Plant	Max. Load per Plant (MW)	Plant Efficiency (kwh/gal)	Fuel Consumption per unit		No. of Units	Total Fuel Consumption at Maximum Capacity	
				(gals/hr)	(gals/day)		(gals/day)	
Tenjo Vista	Tenjo Vista	4.4	13.60	324	7,765	4	31,059	31,059
Fast Tracks	Talofoto	4.4	14.34	307	7,364	2	14,728	31,999
	Manengon	5.3	14.73	360	8,635	2	17,271	
TEMES CT	TEMES CT	40.0	9.16	4,367	104,803	1	104,803	104,803
Northern CTs	Dededo CT	22.0	9.56	2,301	55,230	2	110,460	277,203
	Macheche CT	22.0	10.45	2,105	50,526	1	50,526	
	Yigo CT	22.0	11.64	1,890	45,361	1	45,361	
	Aggreko	1.0	13.21	76	1,817	39	70,855	

TOTAL

445,064