



**CONSOLIDATED
COMMISSION ON UTILITIES**

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

RESOLUTION NO. 2017-06

**AUTHORIZING MANAGEMENT OF GUAM POWER AUTHORITY (GPA)
TO AWARD THE ENERGY STORAGE PHASE I CONTRACT TO LG CNS**

WHEREAS, Guam Power Authority (GPA) issued its 2014 Series A Revenue Bond on September 18, 2014 and a portion of these bonds are reserved for an Energy Storage System (ESS) in the amount of \$35,000,000 to help alleviate system frequency issues and support renewable energy integration; and

WHEREAS, the Energy Storage System Phase I project involves the design, procurement, installation and interconnection of a 24 MW ESS at the GPA Agana Substation and 16 MW ESS at the Talofofu Substation; and

WHEREAS, GPA hired Andriano E. Balajadia, P.E. and his subcontractor Electric Power Systems to assist with the development of the bid documents and provide technical support during the ESS procurement process for \$367,219; and

WHEREAS, through Invitation for Multi-Step Bid No. GPA-182-15, GPA solicited the services of an Engineer/Procure/Construct (EPC) contractor to provide a “turn-key” project based on the following:

- The ESS projects will be commissioned within 12 months after the award of the contract
- The technology proposed for the ESS will have at least 1 year of commercial operations history in a utility environment
- The ESS will deliver energy directly to the existing GPA transmission system

- 1 • The ESS will have a minimum 20-year warranty
- 2 • A 25-year performance-based Operations and Maintenance (O&M) contract will
- 3 be provided with the ESS

4

5 **WHEREAS**, upon evaluation of the submitted bid proposals, the GPA Bid Evaluation

6 Committee determined that LG CNS was the lowest, qualified bidder and recommends awarding

7 the contract to LG CNS for the amount of \$34,999,070 for the design/construction and annual

8 O&M amounts ranging from \$217,040 to \$400,997 as indicated in Exhibit A; and

9

10 **WHEREAS**, the total cost of the bid development support contract with Andriano E.

11 Balajadia, P.E. (\$367,219) and the design/construction contract with LG CNS (\$34,999,070) is

12 \$35,366,289 which is over the 2014 Series A Revenue Bond funding by \$366,289; and

13

14 **WHEREAS**, GPA will fund the excess amount of \$366,289 through its FY2018 CIP

15 budget and will fund the annual O&M payments through its O&M budget; and

16

17 **WHEREAS**, Exhibit B contains the draft contract between GPA and LG CNS for the

18 Energy Storage System Phase I project; and

19

20 **WHEREAS**, through GPUC Docket 15-16 in the matter of GPA's request for review and

21 approval of the bid documents, the GPUC ordered GPA to seek prior approval from the GPUC

22 before entering into a final contract with the selected contractor.

23

24 **NOW, THEREFORE BE IT RESOLVED**, by the Consolidated Commission on

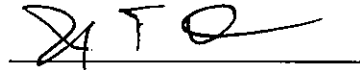
25 Utilities as follows:

- 26
- 27 1. The General Manager of the Guam Power Authority is authorized to petition the Guam
 - 28 Public Utilities Commission for review and approval of the contract between GPA and
 - 29 LG CNS for the Energy Storage System Phase I project.

1 **RESOLVED**, that the Chairman certifies and the Secretary attests to the adoption of
2 this Resolution.

3
4 **DULY AND REGULARLY ADOPTED** this 24th day of January, 2017.

5
6 **Certified by:**

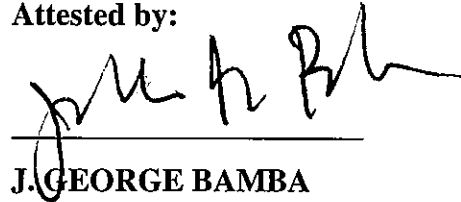
7
8 

9 **JOSEPH T. DUENAS**

10 Chairperson

11 Consolidated Commission on Utilities

12
13 **Attested by:**

14
15 

16 **J. GEORGE BAMBA**

17 Secretary

18 Consolidated Commission on Utilities

1 **SECRETARY'S CERTIFICATE**

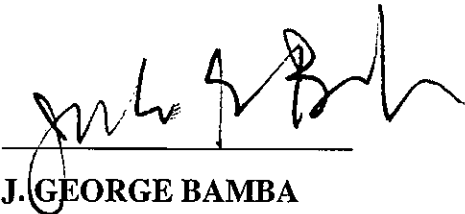
2
3 I, **J. George Bamba**, Secretary for the Consolidated Commission on Utilities do hereby
4 certify that the foregoing is a full, true, and correct copy of the resolution duly adopted at a
5 regular meeting of the members of Guam's Consolidated Commission on Utilities, duly and
6 legally held at the meeting place thereof on *January 24, 2017*, at which meeting of all said
7 members had due notice and at which at least a majority thereof were present, and
8

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

10
11 Ayes: 5
12 Nays: 0
13 Absent: 0
14 Abstain: 0
15

16 As of the date of this certification, said original resolution has not been amended,
17 modified, or rescinded since the date of its adoption, and the same is now in full force and effect.
18

19 **SO CERTIFIED** this 24th day of January 2017.

20
21 
22

23 **J. GEORGE BAMBA**

24 Secretary

25 Consolidated Commission on Utilities
26
27
28
29
30
31

“EXHIBIT A”

1
2
3
4
5
6
7
8

LG CNS			
	24 MW Agana	16 MW Talofoto	Total
Design & Construction	\$ 16,799,554	\$ 18,199,516	\$ 34,999,070
Fixed O&M Annual Fee			
Year 1	\$ 108,520	\$ 108,520	\$ 217,040
Year 2	\$ 111,259	\$ 111,259	\$ 222,518
Year 3	\$ 114,075	\$ 114,075	\$ 228,150
Year 4	\$ 116,969	\$ 116,969	\$ 233,938
Year 5	\$ 119,943	\$ 119,943	\$ 239,886
Year 6	\$ 123,000	\$ 123,000	\$ 246,000
Year 7	\$ 126,143	\$ 126,143	\$ 252,286
Year 8	\$ 129,373	\$ 129,373	\$ 258,746
Year 9	\$ 132,693	\$ 132,693	\$ 265,386
Year 10	\$ 136,106	\$ 136,106	\$ 272,212
Year 11	\$ 139,615	\$ 139,615	\$ 279,230
Year 12	\$ 143,222	\$ 143,222	\$ 286,444
Year 13	\$ 146,931	\$ 146,931	\$ 293,862
Year 14	\$ 150,744	\$ 150,744	\$ 301,488
Year 15	\$ 154,663	\$ 154,663	\$ 309,326
Year 16	\$ 158,694	\$ 158,694	\$ 317,388
Year 17	\$ 162,837	\$ 162,837	\$ 325,674
Year 18	\$ 167,098	\$ 167,098	\$ 334,196
Year 19	\$ 171,479	\$ 171,479	\$ 342,958
Year 20	\$ 175,984	\$ 175,984	\$ 351,968
Year 21	\$ 180,617	\$ 180,617	\$ 361,234
Year 22	\$ 185,380	\$ 185,380	\$ 370,760
Year 23	\$ 190,279	\$ 190,279	\$ 380,558
Year 24	\$ 195,316	\$ 195,316	\$ 390,632
Year 25	\$ 200,498	\$ 200,499	\$ 400,997

"EXHIBIT B"

INVITATION FOR MULTI-STEP BID

NO.: GPA-082-15

ENERGY STORAGE SYSTEM

PHASE I



DRAFT CONTRACT

CONTRACT

(Contractor)

GUAM POWER AUTHORITY

2017

SECTION 1. PURPOSE AND SCOPE OF SERVICES	2
SECTION 2. CONDITIONS PRECEDENT	2
SECTION 3. CONTRACT DOCUMENTS.....	2
SECTION 4. CONTRACT TERM	3
SECTION 5. COMPENSATION FOR SERVICES	3
SECTION 6. OPERATION OF THIS CONTRACT	5
SECTION 7. PROTECTION OF WORK AND PROPERTY	5
SECTION 8. DEFECTIVE WORK	6
SECTION 9. DEFAULT.....	6
SECTION 10. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES	6
SECTION 11. SUBCONTRACTS	6
SECTION 12. ASSIGNMENT OF AGREEMENT	7
SECTION 13. EQUAL OPPORTUNITY	7
SECTION 14. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS	8
SECTION 15. RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX	8
OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES.....	8
SECTION 16. CLAIMS AND DISPUTES.....	8
SECTION 17. TERMINATION FOR CONVENIENCE	8
SECTION 18. SURRENDER OF PREMISES	9
SECTION 19. FAILURE TO COMPLY WITH LAWS.....	9
SECTION 20. AMENDMENT AND WAIVER.....	9
SECTION 21. GOVERNING LAW	9
SECTION 22. RELATIONSHIP OF PARTIES	9
SECTION 23. NOTICE TO OTHER PARTY.....	10
SECTION 24. ATTORNEY'S FEES AND COSTS	10
SECTION 25. CONTRACT BINDING EFFECT	10

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, duly organized, licensed, registered and qualified to do business in Guam 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 Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913;

RECITALS

WHEREAS, GPA desires to design and construct the Energy Storage System Phase I project; and

WHEREAS, GPA has provided adequate public announcement of the need for such services through an Invitation for Multi-Step Bid, GPA-082-15, describing the type of services required and specifying the type of information and data required of each bidder; and

WHEREAS, CONTRACTOR submitted a bid proposal to design and construct the Energy Storage System Phase I project; and

WHEREAS, GPA, upon evaluation of the submitted bid proposal, determined that CONTRACTOR is the most responsive bidder to provide the services set forth in the Multi-Step Bid; and

WHEREAS, CONTRACTOR is fully willing to provide, and is capable of performing the design and construction of the Energy Storage System Phase I project, set forth in the Multi-Step Bid and Agreement in accordance with the terms and conditions thereof; and

WHEREAS, the Consolidated Commission on Utilities has determined that to hire CONTRACTOR to design and construct the Energy Storage System Phase I project is in the best interest of GPA.

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 acknowledged, CONTRACTOR and GPA hereby agree as follows:

SECTION 1. PURPOSE AND SCOPE OF SERVICES

1.1 Purpose

CONTRACTOR agrees to provide all the services as required under the Contract Documents and GPA agrees to pay for all the services rendered, in the amount of \$_____ plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, to design and construct the Energy Storage System Phase I project on or about 365 Calendar Days after NTP.

1.2 Scope of Services

CONTRACTOR agrees to furnish all the necessary labor, supplies and materials, machinery, equipment, facilities, tools and services necessary or proper to perform and complete in a workmanlike manner all the work required for the design and construction of the Energy Storage System Phase I project as required under the Contract Documents and herein. CONTRACTOR shall observe, comply with and be subject to all terms, conditions, requirements, and limitations of the Contract Documents and shall carry on the Contract to the satisfaction of GPA.

SECTION 2. CONDITIONS PRECEDENT

2.1 CONTRACTOR's Submittals

CONTRACTOR shall supply the following to GPA, each in form and substance satisfactory to GPA unless such condition precedent is waived by GPA:

- A. Copies of resolutions adopted by CONTRACTOR's Board of Directors authorizing the execution, delivery and performance by CONTRACTOR of this Agreement certified by the company secretary of CONTRACTOR in a manner satisfactory to GPA;
- B. Performance Bond as specified in Appendix F of the Multi-Step Bid Documents;
- C. Copy of the Articles of the Incorporation of CONTRACTOR certified by the company secretary in a manner satisfactory to GPA;
- D. Copy of CONTRACTOR's license to do business in Guam.

2.2 GPA's Submittals

GPA shall supply the following, each in form and substance satisfactory to CONTRACTOR unless such condition precedent is waived by CONTRACTOR:

- A. Copies of resolutions adopted by the Consolidated Commission on Utilities authorizing the execution, delivery and performance by GPA of this Agreement, each certified by the corporate secretary of the CCU in a manner satisfactory to CONTRACTOR;

SECTION 3. CONTRACT DOCUMENTS

3.1 Documents Included

It is mutually agreed that the following lists of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the contract documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they

are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows in their order of precedence:

- A. This Contract
- B. Amendments to Multi-Step Bid No.: GPA-082-15
- C. Multi-Step Bid No.: GPA-082-15
- D. CONTRACTOR's Proposals for Multi-Step Bid No.: GPA-082-15
- E. The Performance Bond
- F. Affidavit of Disclosure of Major Shareholders
- G. Audited financial information on CONTRACTOR's firm and all subcontractors that will be used in the project (if applicable)
- H. Certificate of Good Standing to conduct business in jurisdiction of residence
- I. Non-collusion Affidavit
- J. Declaration Regarding Compliance with DOL Wage Determination
- K. No Gratuities or Kickback
- L. Ethical Standards Affidavit
- M. Restriction against Contractors Employing Sex Offenders from Working at Government of Guam Venues
- N. Bid Bond
- O. A current Guam Business License. Although it is not required in order to provide a bid for this engagement, obtaining a Guam Business License is a pre-condition for entering into a contract with the Authority.

3.2 Discrepancies

In the case of discrepancies or conflicts between the above-referenced contract documents, this Contract shall take precedence over GPA-082-15, and CONTRACTOR's proposal submitted in response to the MULTI-STEP BID. In case of discrepancies or conflicts between the Amendments to GPA-082-15, the Amendments shall take precedent. If CONTRACTOR believes that there is any discrepancy or inconsistency between this Contract and the other contract documents, CONTRACTOR shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

3.3 Presumption of Familiarity

It will be conclusively presumed that CONTRACTOR has read, examined and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. CONTRACTOR is assumed to be familiar with all federal (U.S.) And local laws, ordinances, rules and regulations of Guam that in any manner affect the work. Ignorance of law on the part of CONTRACTOR will not relieve CONTRACTOR from responsibility.

SECTION 4. CONTRACT TERM

4.1 Term

The term of this Contract shall be for three hundred sixty-five calendar (365) days after NTP on _____, 2017 and shall continue until the midnight of _____, 2018.

SECTION 5. COMPENSATION FOR SERVICES

5.1 Schedule of Values

Within three days after receipt of notice to proceed, the CONTRACTOR shall submit for approval a schedule of the estimated values of the main branches of the work totaling the amount of the contract. The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions.

5.2 Payment

GPA shall pay CONTRACTOR for costs and services rendered hereunder in accordance with this Agreement. Compensation for services performed and provided by CONTRACTOR shall be partial payments on a monthly basis after receipt and approval of the invoice covering the work performed during the preceding calendar month. CONTRACTOR shall invoice GPA once a month, and payment shall be made within 30 days of after receipt of an acceptable invoice. In the event of any dispute with regard to any portion of the invoice, the undisputed portion shall be paid pending settlement of the dispute. Should GPA fail to make any payment due to CONTRACTOR under this Agreement, GPA shall pay interest to CONTRACTOR in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

No payments for installed materials on the site will be made unless such request is accompanied by a receipt or certification showing that the CONTRACTOR has made payment in full for such work done. In preparing such estimates, preparatory work done shall not be considered for payment. Materials delivered to site shall be considered for payment subject to the following conditions:

- A. The material shall be kept in a safe and enclosed warehouse or area located on site with restricted access.
- B. The receipt and issue of material must be controlled by a stock card kept in the warehouse.
- C. Insurance coverage required under Volume I, Section 4 shall include insurance of such material and shall include theft insurance.
- D. Request for payment must be accompanied with certification and receipts indicating the cost of material and showing that CONTRACTOR has made full payment for such material.

In making such partial payments there shall be retained ten percent (10%) of the estimated amount until final completion and acceptance of all work covered by the contract. However, if the Contracting Officer, at any time after 50 percent of the work has been completed, finds that satisfactory progress is being made, he may authorize payment in full of each progress payment for work performed beyond the 50 percent stage of completion. Also, whenever the work is substantially complete, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the Government, at his discretion, may release to CONTRACTOR all or a portion of such excess amount.

All materials and work covered by partial payments made shall thereupon become the sole property of GPA, but this provision shall not be construed as relieving CONTRACTOR from the sole responsibility for all materials and work upon which payment have been made, or the restoration of any damaged work or as a waiver of the right of GPA to require the fulfillment of all of the terms of the contract.

5.3 Release of Claims

Neither the final payment or any part of the retained percentage shall become due until CONTRACTOR shall deliver to GPA through the Contracting Officer a complete release of all claims against GPA arising under and by virtue of this contract, including claims of all subcontractors and suppliers of either materials or labor, other than such claims, if any, as may be specifically excepted by CONTRACTOR.

5.4 Certificate of Completion

Upon completion and acceptance of all work whatsoever required and the release of all claims against GPA as specified, the Contracting Officer shall file a written certificate with GPA and with CONTRACTOR as to the entire amount of work performed and compensation earned by CONTRACTOR, including extra work and compensation thereof.

5.5 Total Amounts Paid to CONTRACTOR

The amounts paid or reimbursed to CONTRACTOR shall in no event exceed the dollar amount indicated above except upon prior written agreement by the parties. Prior to incurring any expense not contemplated in the total contract amount, CONTRACTOR shall request prior approval of any such additional cost from GPA. No such expense shall be reimbursable unless approved in advance by GPA.

5.6 Final Payment

Final payment shall be made upon delivery and acceptance of all Services as herein specified and performed under this Agreement. Prior to final payment, and as a condition precedent thereto, CONTRACTOR shall execute and deliver to the Authority a release of any claims arising under and by virtue of this Agreement against the Authority except any identified written claims in existence at the time of the final payment.

5.7 Guam Gross Receipts Tax

The prices and costs set forth in this Agreement are based on the assumption that the Services performed will be subject to the Guam Gross Receipts Tax. CONTRACTOR is responsible for payment of any applicable taxes.

SECTION 6. OPERATION OF THIS CONTRACT

The Guam Power Authority's responsibility for the day to day monitoring and enforcement of this Contract resides with the GPA Strategic Planning and Operations Research Manager or his designee. CONTRACTOR shall identify to GPA the person(s) responsible for the implementation of the Contract and who shall act as CONTRACTOR's point of contact.

SECTION 7. PROTECTION OF WORK AND PROPERTY

CONTRACTOR shall at all times safely guard GPA's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the contract documents) from damage. All passageways, guard

fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

SECTION 8. DEFECTIVE WORK

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the failure of GPA to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve CONTRACTOR from the responsibility of securing the quality and progress of work as required by these specifications.

Any defective work that may be discovered before the completion of the work or within such time as required by the bond shall be replaced by work and materials that shall conform to the spirit and intent of the drawings, specifications and contract.

The fact that GPA may have overlooked defective work shall not constitute the acceptance of work. NO PAYMENT WHETHER PARTIAL OR FINAL SHALL BE CONSTRUED TO BE AN ACCEPTANCE OF DEFECTIVE WORK OR IMPROPER MATERIALS.

GPA may at any time by order given in writing stop any work not being done according to drawings and specifications and any order so given shall not in any way relieve CONTRACTOR from completing his contract and shall not in any way terminate, cancel or abrogate the contract or any part thereof, and the Government of Guam shall not in any way be responsible for the delay due to stopping the work as aforesaid.

SECTION 9. DEFAULT

In the event either party of this Contract fails to perform any of the provisions of this Contract, the other party must notify the party in default in writing of the deficiency or non-performance. The party in default has thirty (30) calendar days in which to remedy such default. If such default is not cured within thirty (30) calendar days, the other party may terminate all or part of the Contract. Events of default include but are not limited to the following:

- A. Failure of CONTRACTOR to provide evidence of an acceptable performance bond on specified time.
- B. Failure of GPA to pay invoices within 30-days of receipt.
- C. Failure of CONTRACTOR to adhere to the terms of the Contract.

SECTION 10. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES

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, statutes, and regulations necessary for the performance of the Contract by CONTRACTOR.

SECTION 11. SUBCONTRACTS

Nothing contained in the contract documents shall be construed as creating any contractual relationship between any subcontractor and GPA. The diffusion or sections of the specifications are not intended to control CONTRACTOR in dividing the work among subcontractors or to limit the work performed by any trade.

CONTRACTOR shall be as fully responsible to GPA for the acts and omissions of subcontractors and of persons employed by them, as he is for the acts and omissions of persons directly employed by him.

CONTRACTOR shall be responsible for the coordination of the subcontractors engaged in his work.

CONTRACTOR shall, without additional expense to GPA, utilize the services of specialty subcontractors on those parts of the work which are specified to be performed by specialty subcontractors.

GPA will not undertake to settle any differences between CONTRACTOR and his subcontractors or between subcontractors.

CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the work including waiver of mechanics liens to bind subcontractors by the terms of the contract documents insofar as applicable to the work of subcontractors and to give GPA any exercise over CONTRACTOR under any provisions of the contract documents.

SECTION 12. ASSIGNMENT OF AGREEMENT

CONTRACTOR shall not assign the whole or any part of this contract or any monies due or to become due hereunder without the written consent of GPA and of all the sureties executing any bonds on behalf of CONTRACTOR in connection with said contract. In case CONTRACTOR assigns the whole or any part of said contract or assigns all or any part of any monies due or to become due under said contract, the instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due CONTRACTOR or otherwise shall be subject to all of the terms and conditions of said contract or supplemental thereto, the rights and remedies of GPA thereunder or arising by operation of the law and to the liens of all persons, firms, and corporations for services rendered or materials supplied in connection with the performance of said contract.

SECTION 13. EQUAL OPPORTUNITY

CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, sex, color, age, economic status, or national origin. CONTRACTOR will take affirmative action to insure that qualified applicants are employed and that employees are treated during employment without regard to their race, religion, sex, color, age, economic status, or national origin. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoffs or termination, rates of pay or other forms of compensation, and selection for training including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by GPA setting forth the provisions of this nondiscrimination clause.

CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, age, economic status, or national origin.

CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by GPA, advising the said labor union or workers' representative of CONTRACTOR's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965 and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

SECTION 14. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS

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

SECTION 15. RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

GCA 5 §5253(b) restricts the CONSULTANT 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 16. CLAIMS AND DISPUTES

All controversies between GPA and CONTRACTOR which arise under, or are by virtue of, this Contract and which are not resolved by mutual agreement of the parties shall be decided as set forth in 5 G.C.A §5427 of the Guam Procurement Law.

SECTION 17. TERMINATION FOR CONVENIENCE

GPA may terminate the performance of the services under this Contract in accordance with this clause in whole, or in part, whenever GPA determines that such termination of Contract is in the best interest of the Guam Power Authority and its ratepayers.

Any such termination is effected by delivery to CONTRACTOR a written Notice of Termination specifying the extent to which services in the Contract is terminated in whole or in part. In the event GPA elected to terminate the Contract it shall be effective sixty (60) days after the receipt of such Notice of Termination.

SECTION 18. SURRENDER OF PREMISES

Upon voluntary or other termination of this Contract or any early termination of the term from whatever cause, CONTRACTOR shall voluntarily surrender and deliver to GPA all materials purchased and paid for by GPA, documents pertinent to the work, and all equipment and materials related to the work at CONTRACTORs possession.

SECTION 19. FAILURE TO COMPLY WITH LAWS

In the event 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 Guam, GPA may in its sole discretion terminate this Contract upon 30 days written notice.

SECTION 20. 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.

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 estoppels against, the right of such party to require such performance by the other. Nor shall any such failure to object constitute a waiver or estoppels with respect to any succeeding failure of performance.

SECTION 21. GOVERNING LAW

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations 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 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. Judgment upon any award rendered by the Superior Court of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. CONTRACTOR waives all rights against GPA to claim consequential, special or punitive damages.

SECTION 22. RELATIONSHIP OF PARTIES

Nothing contained in the Contract as awarded to the successful bidder 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 supplier of services and beneficiary.

SECTION 23. NOTICE TO OTHER PARTY

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

SECTION 24. ATTORNEY'S FEES AND COSTS

CONTRACTOR agrees that should a default by either party result in litigation, the successful party shall be entitled to recover its costs and reasonable attorney's fees from the defaulting party.

SECTION 25. CONTRACT BINDING EFFECT

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

IN WITNESS WHEREOF the parties hereto have executed this contract as of the day and year first written.

CONTRACTOR:

OWNER:

GUAM POWER AUTHORITY

**JOHN M. BENAVENTE, P.E.
General Manager**

Date: _____

Date: _____

APPROVED AS TO FORM:

By: _____

**D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney**