



RESOLUTION NO. 2020-06

AUTHORIZING THE MANAGEMENT OF THE GUAM POWER AUTHORITY TO PROCEED WITH THE PROCUREMENT OF A CONTRACTOR FOR THE BULK SUPPLY OF RESIDUAL FUEL OIL NO.6 FOR THE BASELOAD POWER GENERATING PLANTS

WHEREAS, the two (2) year base period for the current contract with Mobil Oil Guam, Inc (“Mobil”) for the Supply of Residual Fuel Oil (RFO) for the Baseload Power Generating Units under GPA-009-18 will expire on August 31, 2020; and

WHEREAS, the contract allows for a 3 one-year extension option with mutual agreement of both parties; and

WHEREAS, GPA negotiated with Mobil for the contract extension option with the existing terms and conditions; and

WHEREAS, Mobil declined the contract extension either for the first (1st) year or the full three (3) year extension period and would prefer participating in a new tender; and

WHEREAS, GPA intends to issue a new Invitation for Bid for the procurement of Residual Fuel Oil No.6 for a base period of three (3) years, to commence on or about September 01, 2020 through August 31, 2023, with two (2) additional one-year extension options; and

WHEREAS, the draft bid solicitation documents for the procurement of a new Residual Fuel Oil No.6 supply contract is hereby attached as **Exhibit A**; 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

WHEREAS, GPA is requesting the approval of the CCU to petition the PUC for the issuance of an Invitation for Bid for a new Residual Fuel Oil No.6 supply contract.

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

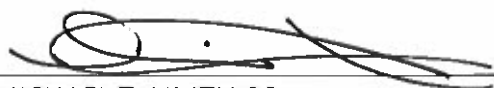
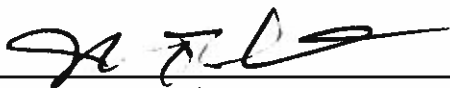
- 28 1. GPA's request to solicit competitive bids for a new Residual Fuel Oil No.6 supply contract
29 through a Multi-Step Bid process is reasonable, prudent and beneficial to its customers.
30
31 2. GPA is authorized to petition the Public Utilities Commission for approval to issue bids to
32 procure a Contractor for the supply of Residual Fuel Oil No.6 for the Baseloads Units.
33

34 **RESOLVED**, that the Chairman of the Commission certifies and the Secretary of the Commission
35 attests the adoption of this Resolution.
36

37 **DULY AND REGULARLY ADOPTED AND APPROVED THIS 21st DAY OF FEBRUARY 2020.**
38

Certified by:

Attested by:



JOSEPH T. DUENAS
Chairperson
Consolidated Commission on Utilities

MICHAEL T. LIMTIACO
Secretary
Consolidated Commission on Utilities

39

40

SECRETARY'S CERTIFICATE

41 I, Michael T. Limtiaco, Secretary for the Consolidated Commission on Utilities (CCU), as
42 evidenced by my signature above do certify as follows: The foregoing is a full, true, and accurate
43 copy of the resolution duly adopted at a regular meeting of the members of Guam Consolidated
44 Commission on Utilities, duly and legally held at a place properly noticed and advertised at which
45 meeting a quorum was present and the members who were present voted as follows:

46

47

Ayes: 5

48

49

Nays: 0

50

51

Absent: 0

52

53

Abstain: 0



Invitation For Multi-Step Bid

No. GPA- -20

SUPPLY OF RESIDUAL FUEL OIL NO.6



Volume II

CONTRACT

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CONTRACT

CONTRACTOR

GUAM POWER AUTHORITY

IFB No. GPA- -20

SUPPLY OF RESIDUAL FUEL OIL NO.6

FORMAL CONTRACT

This Agreement and Formal Contract (“Contract”), is made and entered into on the ____ day of ____, 2020 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;

R E C I T A L S

WHEREAS, GPA desires to maintain uninterrupted supply of Residual Fuel Oil No.6 (hereinafter referred to as “RFO”) to its Baseload Power Plants; and

WHEREAS, the current contract for the supply of RFO will expire on August 31, 2020; and

WHEREAS, GPA seeks to procure a new Contractor for the supply of RFO; and

WHEREAS, the Consolidated Commission on Utilities has determined that the (CONTRACTOR) is a preferred option for GPA to supply the RFO requirements for the Authority; and

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered GPA to proceed with the procurement of a CONTRACTOR for the Supply of RFO; and

WHEREAS, GPA has issued an Invitation For a Multi-Step Bid for the Supply of Residual Fuel Oil No.6 under IFB GPA- -20; and

WHEREAS, CONTRACTOR submitted a bid in response to the Invitation for Bid for the Supply of RFO; and

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the lowest responsive and responsible bidder.

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. DEFINITIONS

- “\$”** The term “\$” refers to currency in U.S. dollars.
- “ASTM”** The term “ASTM” shall mean the American Society for Testing and Materials.
- “API”** The term “API” shall mean the American Petroleum Institute.
- “Barrel”** The term "Barrel" means a volume equivalent to 42 U.S. gallons.
- “Contract”** The term "Contract" means the Fuel Oil Supply Contract executed as a result of IFB GPA- -20.
- “Contract Agreement (Agreement)”** The written agreement between GPA and **CONTRACTOR** covering the Supply of Fuel Oil any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.
- “Contract Documents”** The Contract Agreement, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.
- “Contracting Officer”** The term "Contracting Officer" as used herein means the General

Manager of the Guam Power Authority and shall include his authorized representatives.

“CONTRACTOR” The term "CONTRACTOR" as used herein means the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or his or their authorized assignee.

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

“Delivery Time” The total number of days or the dates stated in the Agreement for furnishing the product.

“General Manager” The General Manager is the Chief Executive Officer of the Guam Power Authority. 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 the Guam Power Authority.

“Notice” The term "Notice" as used herein shall mean and include 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, 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” The General Manager of the Guam Power Authority or the General Manager’s designee.

“PURCHASER” The Guam Power Authority with whom CONTRACTOR has entered into the Contract Agreement.

- “Seller”** The CONTRACTOR.
- “Territory”** The Territory of Guam.
- “OPA’90”** means the Oil Pollution Act of 1990 by the U.S. Congress.
- “Platt’s Asia-Pacific/ Arab Gulf Marketscan”** refers to the source document for the fuel Contract pricing.
- “Metric Ton”** unit of mass equal to 1,000 kilograms (2,205 pounds)
- “D.E.S.”** means Delivered Ex- Ship as set forth in Incoterms 2000, except as modified by the Contract.
- “Fuel Oil”** means “Residual Fuel Oil No. 6” or “RFO”, a liquid hydrocarbon product satisfying the specifications in [Schedule A](#).
- “Gallon”** shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- “Receiving facility”** means any wharf, dock, jetty, pier, quay, sea terminal, buoy, lighter, barge, vessel, or other suitable apparatus capable of receiving fuel oil in bulk.

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 for the term of the Contract. Fuel Oil to be supplied to **GPA** shall conform to the product quality requirements specified in [Schedule A](#) and shall come from reputable sources not sanctioned by the United States government.

The **estimated** total fuel oil requirement is about TWO MILLION BARRELS PER YEAR (2,000,000 bbls/yr). The Minimum Purchase under the Contract is estimated at ONE MILLION BARRELS PER YEAR (1,000,000 bbls/yr).

The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about **September 01, 2020**.

Estimated combined quantities:

MINIMUM: ONE MILLION BARRELS PER YEAR (1,000,000 bbls/yr)

MAXIMUM: TWO MILLION BARRELS PER YEAR (2,000,000 bbls/yr)

Estimated Annual Requirement (Barrels per Year)			
Fuel Grade	First (1 st) Year	Second (2 nd) Year	Third (3 rd) Year
Low Sulfur Fuel Oil (LSFO), 1.19% _w Sulfur (Maximum)	500,000	1,500,000	1,500,000
High Sulfur Fuel Oil (HSFO), 2.00% _w Sulfur (Maximum)	1,500,000	500,000	0

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.

SECTION 3. CONTRACT TERM

The Contract Term shall be for **THREE (3)** years and shall commence on or about after 0:00 hour on **September 01, 2020**, and shall continue until midnight of **August 31, 2022** with options to extend for **TWO (2)** additional One (1) year term, upon mutual agreement of both parties.

SECTION 4. CONTRACT PRICE

The total contract price in U.S. Dollars per Metric Ton (\$/MT) for all residual fuel oil delivered D.E.S. Guam (discharge port) to **GPA** shall be inclusive of all costs and liabilities incurred prior to delivery at discharge port, Cabras Island, Guam.

DES (Delivered Ex- Ship) PROVISIONS:

Under this term, the **CONTRACTOR** quotes a price including the cost of the goods, the marine insurance, and all transportation charges to the designated point of destination (**GPA**). Under this quotation, the **CONTRACTOR** must:

- (1) provide and pay for transportation to named point of destination (**GPA**);
- (2) pay applicable taxes or charges levied on the cargo prior to passage of title to **GPA**;
- (3) provide and pay for marine insurance;
- (4) provide war risk insurance;
- (5) obtain and dispatch promptly to **GPA**, or its agent, copies from the original document of a clean bill of lading, and also insurance policy or negotiable insurance certificate;
- (6) provide **GPA** with copies from the original document of certificates of origin, or any documents issued in the country of origin, or of shipment, or both, which **GPA** may require for importation of goods and, where necessary, for their passage in transit into another country.
- (7) where received-for-shipment ocean bill of lading may be tendered, be responsible for any loss or damage, or both, until the goods have been delivered into the custody of the ocean carrier to **GPA**;
- (8) where on-board ocean bill of lading is required, be responsible for any loss or damage, or both, until the goods have been delivered on board the vessel to **GPA**;

The **CONTRACT PRICE** shall be the **BID PRICE OFFER** calculated as the **BID REFERENCE PRICE** plus the Contractor's **FIXED PREMIUM FEE** in U.S. dollars per Metric Ton (\$/MT) for all residual fuel oil delivered to **GPA** at the Port of Guam.

The **BID PRICE** is the sum of the **FIXED SERVICE FEE** (per Metric Ton) and the **BID REFERENCE PRICE** as of December 2, 2019 as posted in the Platts' Asia-Pacific Marketscan Oil Prices.

BID REFERENCE PRICE:

The **BID REFERENCE PRICE** shall be based on the Platt's Singapore Products Assessment for Fuel Oil Cargoes "HSFO 180 CST" for December 2, 2019.

Reference date: December 2, 2019

	<u>Low (\$/MT)</u>	<u>High (\$/MT)</u>
HSFO 180 CST	\$ 214.62	\$ 214.66

The following is a sample calculation of the mean price for HSFO 180 cst published in the **Platt's Marketscan, Singapore Products Assessments** for Fuel Oil Cargoes for December 2, 2019.

$$\begin{aligned} \text{Mean Singapore Spot} &= \frac{\text{Low} + \text{High Price Assessments}}{2} \\ &= \frac{\$ 214.62 + \$ 214.66 \text{ per Metric Ton (MT)}}{2} \\ &= \$ 214.640 \text{ per Metric Ton (MT)} \end{aligned}$$

BID REFERENCE PRICE = \$ 214.640 per Metric Ton

BID PRICE OFFERS (D.E.S. Ex-Ship Guam):

LSFO 1.19% w Sulfur Max	THREE (3)-YEAR CONTRACT BASE PERIOD US\$/MT (3 decimals)			TWO (2) -YEAR CONTRACT EXTENSION OPTION US\$/MT (3 decimals)	
	First (1st) Year Base Period	Second (2nd) Year Base Period	Third (3rd) Year Base Period	First (1st) Year Extension	Second (2nd) Year Extension
A. Bid Reference Price	\$312.180	\$312.180	\$312.180	\$312.180	\$312.180
B. Fixed Premium Fee	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>
BID PRICE (A+B)					

HSFO 2.00% w Sulfur Max	THREE (3)-YEAR CONTRACT BASE PERIOD US\$/MT (3 decimals)			TWO (2) -YEAR CONTRACT EXTENSION OPTION US\$/MT (3 decimals)	
	First (1st) Year Base Period	Second (2nd) Year Base Period	Third (3rd) Year Base Period	First (1st) Year Extension	Second (2nd) Year Extension
A. Bid Reference Price	\$312.180	\$312.180	\$312.180	\$312.180	\$312.180
B. Fixed Premium Fee	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>	<u>(Enter value)</u>
BID PRICE (A+B)					

SECTION 5. INVOICE PRICE DETERMINATION

Price shall be based on the arithmetic average of the mean of the high/low quotations for “HSFO 180 CST” as published in Platts Asia Pacific/Arab Gulf Marketscan under the heading “FOB Singapore” priced for five (5) valid consecutive quotations immediately prior to B/L date and five (5) immediately after the B/L date plus the fixed premium fee.

In case of “No Posting” on the B/L date, no price will be used and the remaining 10-days average will be used. All price postings are at the prices effective dates.

Sample Calculation:

B/L date = December 2, 2019

Marketscan Postings HSFO 180cst (\$/MT)

<u>Avg</u>	<u>Date</u>	<u>Low</u>	<u>High</u>	
5	November 25, 2019 (Monday)	239.99	240.03	240.010
4	November 26, 2019 (Tuesday)	236.69	236.73	236.710
3	November 27, 2019 (Wednesday)	241.33	241.37	241.350
2	November 28, 2019 (Thursday)	238.19	238.23	238.210
1	November 29, 2019 (Friday)	227.36	227.40	227.380
B/L	December 2, 2019 (Monday)	214.62	214.66	214.640
1	December 3, 2019 (Tuesday)	225.11	225.15	225.130
2	December 4, 2019 (Wednesday)	233.69	233.73	233.710
3	December 5, 2019 (Thursday)	240.37	240.41	240.390
4	December 6, 2019 (Friday)	250.10	250.14	250.120
5	December 9, 2019 (Monday)	258.55	250.14	254.450
Mean Arithmetic Average (\$/MT) =				\$236.454

Invoice Reference Price = \$236.454/MT

Invoice Price Calculation:

<u>Product</u> <u>Grade</u>	<u>Invoice</u> <u>Reference Price</u> <u>(\$/MT)</u>	<u>Fixed Premium Fee</u> <u>(Sample)</u> <u>(\$/MT)</u>	<u>Invoice</u> <u>Price</u> <u>(\$/MT)</u>
LSFO, 1.19%S	236.454	35.000	271.454
HSFO, 2.00%S	236.454	25.000	261.454

If for any reason the quotation “HSFO 180 CST” ceases to exist, the parties shall renegotiate a new price quotation and premium in order to continue the contract.

For invoice calculation purposes, quantity shall be reported in Metric Tons as declared in the Bill of Lading.

SECTION 6. TITLE, CUSTODY AND RISK OF LOSS

Title to the fuel oil and custody thereof shall pass from **CONTRACTOR** to **GPA** when the fuel oil has passed the vessel's permanent flange hose connection at the discharge port. 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**.

SECTION 7. TERMS OF PAYMENT

Documentary Letter of Credit shall be opened two (2) days prior to the beginning of loading.

Payment shall be made in U.S. Dollars Funds without off-set, deduction, or counter-claim within THIRTY (30) calendar days (30-days net term) after the Bill of Lading date provided vessel tenders its NOR within TWELVE (12) days after the B/L date, otherwise it extends day by day (B/L date inclusive). In case the payment due date falls on a Bank holiday or Saturday in Guam, payment shall be made immediately preceding banking day. However, should payment due falls on Sunday or Monday bank holiday in Guam, payment shall be made on the immediately following banking day.

Payment shall be available at Seller's account on Maturity Date. If Buyer fails to pay on the maturity date, Seller shall be reimbursed for the interests related to the time of delay. Interest Rate shall be calculated based on the one month London Interbank Offered Rate (LIBOR) for US Dollar Deposits offered by Bloomberg Publication at 11:00 A.M. London Time, as quoted on page BBAM in effect on the date buyer's payment was due, plus one and one-half percent (1.5%) per annum.

In the event that a duly executed Documentary Letter of Credit (L/C) is amended or cancelled due to error or adjustments caused by the **CONTRACTOR**, the **CONTRACTOR** shall reimburse **GPA** for any penalties for the amendment or cancellation of the LC.

The **CONTRACTOR** shall endeavor to assist **GPA** to revise the payment due dates if requested by **GPA** accordingly. **GPA** has the right to request for revision of the payment due dates and Contractor has the right to reject it at its sole discretion.

CONTRACTOR may provide **GPA** a Line of Credit, but it is not a requirement in the contract. If the amount due under this contract exceeds the **GPA**'s credit line of:

(Amount in Words _____)

(US\$ _____),

available at **CONTRACTOR** system, then as a loading condition, for the amount not covered under the credit line, **GPA** shall:

- (i) Make advance payment not later than one day before the cargo is loaded;
OR
- (ii) Open a **DOCUMENTARY LETTER OF CREDIT (L/C)** at a first-class international bank mutually agreeable to both **GPA** and the **CONTRACTOR**

SECTION 8. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES

All fuels under the terms of this Contract are exempt from the Government of Guam Liquid Fuel Tax and the Government of Guam Gross Receipts Tax as provided by 12 G.C.A., Section 8115.

In the event that any cargoes shall be liable to the payment of Import Duty such Import Duty shall be to the **CONTRACTOR's** account.

CONTRACTOR shall be responsible for filing appropriate tax returns or other filings and requesting rebates, credits, drawbacks or exemptions.

In the event any liquid fuel tax or gross receipts tax or other tax including, but not limited to, excise tax, duty, toll, fee, charge for other exaction or the amount equivalent thereto, and any increase thereof, now or hereafter imposed, levied or assessed by the United States Government, the Government of Guam, the Port Authority of Guam, or other instrumentality or agency thereof in connection with and as a result of the sale of fuel oil herein provided for is collectible or payable by **CONTRACTOR**, (except taxes, penalties, fees or other charges that may be imposed on **CONTRACTOR** because of **CONTRACTOR** 's failure to make proper tax filings including requests for credits, exemptions, drawbacks or rebates) it shall be paid by **GPA** as part of the fuel price set forth herein, on demand by **CONTRACTOR**. Any such payment shall be in addition to the price otherwise herein provided for.

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to **GPA**, it shall be grounds for renegotiation for an equitable adjustment in price.

CONTRACTOR shall be solely responsible for filings and payment of income tax or taxes measured on net income.

SECTION 9. WARRANTY AND CLAIMS

CONTRACTOR warrants that the fuel oil shall meet the specification prescribed herein under Section 10 and other pertinent sections. If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages resulting therefrom.

CONTRACTOR shall be solely responsible for any damages caused by the **CONTRACTOR** or its agents during the process of oil shipment and delivery.

Claims against the **CONTRACTOR** for direct costs incurred on account of their 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 10. PRODUCT AND QUALITY

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in [Schedule A](#).

SECTION 11. QUANTITY AND QUALITY ASSURANCE

Ship-to-Ship (STS) cargo loading is not allowed.

(a) Inspection of fuel oil cargo loading and discharge to determine quantity and quality shall be witnessed and or conducted by the appointed third party independent Inspector mutually acceptable to **GPA** and the **CONTRACTOR**. **CONTRACTOR** shall appoint the independent inspector at the loadport. **GPA** shall appoint the independent Inspector at the discharge port. Such independent inspector shall also perform or witness the required sampling, gauging, and inspection of vessel and shore tanks before and after loading at load port as well as discharge port, Guam. Final determination shall be based on the discharge port findings. All quantity calculations and correction to volume at sixty (60) degree (Fahrenheit) shall be in accordance with the ASTM-IP Petroleum Measurement Tables, Table 6- the latest edition published shall be applicable. All costs and charges for the inspections for the load port shall be borne by the **CONTRACTOR**, and costs at the discharge port shall be equally shared by **GPA** and the **CONTRACTOR**.

(b) Load port samples from each individual shore loading tanks shall be sampled by the independent inspector who shall perform or witness the required tests for quality certification prior to loading. Shore tank composite from each individual shore loading tanks shall be separately tested and the quality must conform to the specifications under Section 10 of the contract. Vessel's composite samples from all vessel's cargo compartments shall also be obtained by the inspector for the consignee, **GPA**, in care of the ship's master. All Samples shall be equally divided into THREE (3) parts, sealed, properly identified, and designated with the required "Chain of Custody of Samples" documentations.

(c) The quality of the cargo to be delivered shall be determined by an independent inspector mutually acceptable to GPA and the **CONTRACTOR** and is to be based on the ship composite samples taken at the port of discharge in such a manner as to secure samples which are representative of the entire cargo delivery. Discharge tanks samples and ship's composite samples shall be divided into THREE (3) parts. One part shall be for **CONTRACTOR** and TWO (2) parts shall be for **GPA**, and **GPA** shall utilize one sample for recertification and reserve the other sample as a retained referee sample. All discharge port samples shall be presented by the inspector for **GPA** in care of the Master of the ship. All samples shall be retained for not less than ONE HUNDRED TWENTY (120) days after delivery. In the event of dispute as to quality, analysis of the samples taken at the discharge port shall be made by an independent inspector, which analysis shall be final and binding upon both parties.

GPA reserves the right to reject any or all deliveries that fail to conform to the quality requirements specified in [Schedule A](#).

GPA has the right to reject any cargo outside the specifications limits, as these are agreed in the context of this contract. In this respect, copies of the quality analysis certificate together with the other shipping documents (B/L, certificate of origin, cargo manifest, certificate of origin, certificate of quantity with shore tank measurement report, certificate of quantity, etc) must be transmitted by fax or e-mail to GPA immediately but no later than 3 days after completion of loading.

Copies of the originals of the ship's "certificate of cleanliness" issued before loading, and the other shipping documents for the consignee (B/L, Certificate of Origin, Cargo Manifest, certificate of Quality, Certificate of Quantity with tank measurement report, Loadport surveyor's

report, etc.) to be marked for the consignee and handed over upon arrival of vessel at discharge port.

It is understood that any delay as may be incurred in discharge due to unavailability of copy of the Bill of Lading will be for **CONTRACTOR's** account. Furthermore, the correct documentation in original format is required in order to establish to the full satisfaction of GPA.

GPA has the right to reject any cargo outside the specification limits. GPA shall notify the Contractor of any rejected delivery by fax or e-mail. Contractor shall promptly deploy a replacement vessel carrying on-spec products to Guam within 12 days from the date of GPA's notice of rejection.

Notwithstanding the above conditions, Contractor shall not be relieved of any responsibilities or penalties provided for in the Contract. In addition, GPA shall impose all applicable penalties for failure of the Contractor to provide the replacement cargoes in a timely manner. Contractor shall be liable for all direct expenses as a result of the delayed arrival of the shipment beyond the last day of the original 5 days ETA date.

SECTION 12. QUANTITY DETERMINATION

Latest edition of API Standard 2540 (and sub-sections) or its metric equivalent with conversions shall be the method used for quantity determination.

Quantity determination shall be performed by a third party independent inspector mutually acceptable to **GPA** and the **CONTRACTOR**. Quantity shall be based from the load port shore tanks gauges as to be reflected as Bill of Lading quantity NET barrels at sixty degrees Fahrenheit (60 °F). The Certificate of Quantity shall separately use the density from each individual shore loading tanks. 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. A copy of the load port shore tank measurements shall be included as supplemental documents.

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

In the event of the variances between the B/L quantity and the discharge port (shore tanks) receipts, The **AUTHORITY** shall pay (absorb) a quantity shortfall up to ONE-HALF PERCENT (0.50 %) of the barrel established quantity; shortages beyond the 0.5% shall be covered by the **CONTRACTOR**.

SECTION 13. SECURITY OF SUPPLY

For security of supply, **CONTRACTOR** reserves the right to supply fuel oil meeting **GPA** specifications from any source. Fuel Oil to be supplied to **GPA** shall conform to the product quality requirements specified in [Schedule A](#) and shall come from reputable sources not sanctioned by the United States government.

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.

SECTION 14. 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 his 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 22). 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 15. 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 16. 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 therefore;
- (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 for 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 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 17. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in Section 16, 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 18. PAYMENT REQUIRED

Notwithstanding the provisions of Section 16, supra, **GPA** shall not be relieved of any obligation to make payments for any fuel 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 19. PRORATION OR EQUITABLE ALLOCATION

If any of the events enumerated in [Section 16](#), 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** has 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 20. ALTERNATE SUPPLY

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of [Section 16](#), supra, **GPA** may at its sole discretion seek an alternative source of fuel oil to include, but not limited to, a second contractor for the supply of fuel oil so long as such condition shall exist.

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, **GPA** may at its sole discretion seek an alternative source of fuel oil to include, but not limited to, a second contractor for the supply of fuel oil so long as such condition of negligence shall exist. If the cost of fuel during such period of negligence shall exceed the 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.

For the purpose of this clause, preference for the second contractor shall be given to the next lowest bidder.

SECTION 21. RESUMPTION OF PERFORMANCE

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of [Section 16](#), supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby,

promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in [Section 16](#), 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 22. GOVERNING LAW AND DISPUTES

This CONTRACT shall in all respects be governed by the Laws of Guam. The provisions of the United Nations Convention on Contracts for the International Sale of Goods are expressly excluded.

This CONTRACT shall not be construed to confer any benefit on any person not being a party to this Contract nor shall it provide any rights to such person to enforce any of its provisions. The provisions of the English Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

In the event of any controversies, dispute or difference of any nature (a "Dispute") between the parties arising from or in connection with this Contract, either party may give notice to the other in writing of the existence of such dispute specifying its nature and the points at issue. If the dispute shall not have been amicably resolved within thirty (30) days from the date of the said notice, then the same shall be exclusively and definitely resolved through final and binding arbitration in New York, by the AMERICAN ARBITRATION ASSOCIATION ('AAA'), in accordance with the rules of arbitration of such institution in effect as of the date the existence of the controversy is notified by one of the parties. The arbitration shall be conducted by three arbitrators, unless all parties to the dispute agree to a sole arbitrator within thirty (30) days after the filing of the arbitration. Each party to the dispute shall appoint one arbitrator within thirty (30) days of the filing of the arbitration, and the two arbitrators so appointed shall select the presiding arbitrator within thirty (30) days after the latter of the two arbitrators have been appointed by the parties to the dispute. If a party to the dispute fails to appoint its party-appointed arbitrators or if the two party-appointed arbitrators cannot reach an agreement on the presiding arbitrator within the applicable time period, then LCIA shall appoint the remainder of the three arbitrators. The arbitration proceedings shall be conducted in English and the arbitrator(s) shall be fluent in the English language. The award of the arbitral tribunal shall be final and binding. Judgment on the award of the arbitral tribunal may be entered and enforced in any court having jurisdiction thereof. The cost of the arbitration proceedings, including attorneys' fees, shall be borne in the manner determined by the arbitral tribunal. Any right to appeal or challenge any arbitral decision or award is hereby waived. The parties may seek a preliminary injunction or other preliminary judicial relief, if in its judgment such action is

necessary to avoid irreparable damage. It is expressly agreed that indirect, special, punitive and consequential damages shall not be awarded.

SECTION 23. CONTRACTOR'S INSURANCE

The **CONTRACTOR** shall maintain an insurance policy or ensure that vessel nominated have in place an insurance policy for oil pollution (throughout the entire period of the voyage to and from the discharge port) with coverage consistent with the provisions in compliance to the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90) and any amendments thereto. This includes, but is not limited to, compliance with oil spill clean-up plan, financial responsibility, and all other provisions of OPA 90.

At a minimum, **CONTRACTOR** shall carry the following insurance coverages and shall provide evidence of these coverages in the form of a Certificate of Insurance with the applicable wordings and endorsements:

ENVIRONMENTAL POLLUTION LIABILITY

At a minimum, must carry and have in force Environmental Pollution Liability insurance with limits not less than **CONTRACTOR** \$50,000,000 (USD FIFTY MILLION DOLLARS) each condition and in the aggregate to include coverage for First party clean-up costs. The carrier must be rated not less than AM Best A rated and minimum financial size of IX. This coverage must be primary and non-contributory. The Guam Power Authority must be named as an additional insured with a Waiver of Subrogation. On the Certificate of insurance, carrier must agree by endorsement, that in the event of any cancellation and/or material change in coverage the carrier will give minimum 60-day prior written notice to the Policy holder and the Guam Power Authority.

MARINE LIABILITY

At a minimum, must carry and have in force Marine Liability insurance with limits not less than \$50,000,000 (USD **CONTRACTOR** FIFTY MILLION DOLLARS) each occurrence and in the aggregate. The carrier must be rated not less than AM Best A rated and minimum financial size of IX. This coverage must be primary and non-contributory. The Guam Power Authority must be named as an additional insured with a Waiver of Subrogation. On the Certificate of insurance, carrier must agree by endorsement, that in the event of any cancellation and/or material change in

coverage the carrier will give minimum 60-day prior written notice to the Policy holder and the Guam Power Authority.

SECTION 24. 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 oil spillage caused by it or its agent or **CONTRACTORS** during the process of 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 vessel owned or chartered by the Contractor for deliveries under this agreement shall meet the requirements of the U.S. Oil Pollution Act of 1990 (OPA 90).

SECTION 25. TRANSPORTATION

The Authority shall nominate and advise the **CONTRACTOR** of the 10-day delivery date range not later than 30 days before the 1st calendar day of the delivery date range. The **AUTHORITY** and **CONTRACTOR** shall mutually agree to narrow down to a 5-day delivery date range 21 days prior to the 1st day of the 5-day delivery date range.

(a) **CONTRACTOR** shall arrange for the transportation of the fuel oil from loading port to the Guam dock, and give **GPA** at least FIFTEEN (15) days prior notice of the approximate arrival date of each tanker.

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** or its agents shall further arrange for the use of pier receiving facilities owned by the Port Authority of Guam (PAG) or its Facility Manager, U.S. Coast Guard, U.S. Custom and Immigration inspections, Guam Commercial Port authorities, Guam tug services, Port Stevedores services, and others as necessary for the safe berthing of fuel tankers and obtaining clearance for the discharging of the cargo at the sole expense of the **CONTRACTOR**.

GPA shall exercise due diligence and make its best effort to assist the **CONTRACTOR** in arranging for safe berthing facilities to accommodate vessels at the F-1 dock with the following information:

Maximum LOA	259meters
Maximum Breadth	45 meters
Maximum Vessel Draft Alongside	16.4592 meters
Maximum Displacement	108,840 metric tons
Maximum Free Board	23 meters

The above information is subject to change and **CONTRACTOR** shall at all times abide by the requirements of latest edition of the Port and Terminal Information Handbook.

GPA shall provide the **CONTRACTOR** an estimated total cargo quantity to be delivered approximately THIRTY (30) days from estimated 10-day delivery date range.

GPA shall provide notification to the **CONTRACTOR** as to the final split cargo delivery quantity approximately TWENTY-ONE (21) days prior to the first (1st) day of the estimated 5-day delivery date range which will also be specified in this final notice. **GPA estimates** a single delivery requirement in the range of TWO HUNDRED THIRTY THOUSAND TO TWO HUNDRED EIGHTY THOUSAND BARRELS (230,000 -280,000 bbls). The delivery may be a single cargo of either LSFO or HSFO, or a split SEGREGATED cargo of both LSFO and HSFO, as determined by GPA.

For each delivery, the **CONTRACTOR** will have an operational tolerance of FIVE PERCENT (5%) on the cargo size, as well as the obligation to deliver the shipment within defined delivery date range, as has been notified by **GPA**.

GPA shall have the right to cancel or change the previously notified cargo size and/or delivery date within twenty-one (21) calendar days prior to the first day of the delivery range without penalty.

(b) Tanker nomination procedures:

The **AUTHORITY** shall advise the contractor of projected "tankers' schedule and quantities per slate" THIRTY (30) days before the commencement of the contract, and **CONTRACTOR** agrees to provide all fuel requirements of **GPA** as advised and all succeeding cargo requirements thereafter.

(i) **Vessel Specification:**

All vessels nominated by the **CONTRACTOR** for fuel oil deliveries to **GPA** shall meet the vessel vetting requirements and be pre-approved by the F-1 dock Facility Manager.

The **CONTRACTOR** or its agents shall be responsible in seeking vessel clearance from the F-1 dock Facility Manager. In the event that vessels owned or chartered by the **CONTRACTOR** do not meet the F-1 dock Facility Manager's specification, **CONTRACTOR** shall have the vessel shortfalls corrected or have another vessel nominated and ensure that a suitable vessel is cleared for timely delivery of cargo to **GPA**. The **CONTRACTOR** or its agents shall be responsible for the scheduling and reservation of the dock with the F-1 dock Facility Manager.

The **CONTRACTOR** shall ensure that the vessel assigned to perform the voyage should be rid of any slop before reaching the designated port and have adequate slops – storage capacity to ensure that unloading of any slops is avoided.

Cargo temperature shall be maintained between one hundred fifteen to one hundred thirty degrees Fahrenheit (115°F -130°F) on arrival and during the discharge at Guam Port.

(c) Ship Lay time and Demurrage:

Ship lay time at the discharge port shall commence six (6) hours after the tender of Notice of Readiness (NOR) or when the vessel berths whichever occurs first, and to cease upon last cargo hoses disconnection. Allowable ship laytime shall be thirty-six (36) hours for total cargo B/L quantities up to 240,000 bbls and shall extend by ONE (1) hour for every 10,000 bbls in excess of 240,000 bbls. Official NOR shall be tendered/ re-tendered after completion of inspection and clearance for conducting cargo discharging operations is granted by the Port Authorities.

However, if the vessel arrives before the first day of the agreed arrival date range, lay time shall not commence until 06:00 AM on the first day of the agreed arrival date range or the time discharge commences whichever is earlier. If the vessel arrives after the last day of the agreed arrival date range lay time shall commence at the time discharge commences.

If regulations of the Port Authorities prohibit the discharge of cargo at night, the time so lost shall not count as used lay time.

(i) Ship Demurrage:

If lay time allowed is exceeded, GPA shall be liable to pay the **CONTRACTOR** for applicable demurrage. However, any delay due to vessel inspection and clearance by Local and Federal Authorities, breakdown of the vessel's equipment, or failure by vessel to comply with the requirements of the discharge port with respect to equipment aboard, shall not be counted in the lay time used for calculating demurrage. Waiting period for berthing, port formalities, product sampling and testing for quality conformance shall be deducted in the lay time calculation.

The vessel must be able to attain a discharge pressure of up to one hundred (100) psi measured at the F-1 Dock manifold. Time lost for slow discharging shall be deducted from the lay time used for calculating demurrage.

Demurrage cost if payable by **GPA** shall be at the single voyage demurrage rate specified in the single voyage Charter Party of the vessel loading the cargo in question and the **CONTRACTOR** shall furnish **GPA** with a copy of such Charter Party. Such charges must be submitted to **GPA** within 90 days after Bill of Lading date.

CONTRACTOR 's and **GPA**'s rights and duties under [Section 24](#) and [Section 25](#) do not supersede or control the provisions of Section 16 Force Majeure.

(d) **Dock Use Lay time Charges:**

Dock lay time of thirty-six (36) hours at the discharge port, to commence upon commencement of cargo discharging, and to cease upon last cargo hose disconnection. Dock lay time charges in excess of the first thirty-six (36) hours are paid by GPA to the F-1 dock Facility Manager.

In the event that the allowable lay time of thirty-six (36) hours is exceeded due to delays caused by the vessel, the Contractor shall reimburse GPA for any charges in excess of the allowable lay time. Calculation for reimbursement shall be based on the Letter of Protest issued to the Vessel's Officer converted to time units multiplied by the dock excess lay time charge cost.

SECTION 26. COORDINATION – AMMUNITION LOADING

(a) The **CONTRACTOR** is hereby advised and agrees that the unloading of fuel oil is not permitted during the time that the unloading or loading of ammunition is taking place at the U.S. Navy's ammunition wharf.

(b) Coordination to prevent conflict in unloading between ammunition and fuel oil will be effected

jointly by responsible parties representing the U.S. Navy, the Port Authority, **GPA** and the **CONTRACTOR**. Any charges that may result because of demurrage caused by delay in discharge of fuel oil related to ammunition unloading or loading will be borne by the **GPA**, provided that notice of arrival of tanker is given to **GPA** by the **CONTRACTOR** at least FIFTEEN (15) days prior to ETA Guam. In absence of such notice any delay costs shall be borne solely by the **CONTRACTOR**.

SECTION 27. 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 or a second contractor immediately upon issuance of such notification or whenever it deems appropriate.

SECTION 28. 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 29. 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 30. PENALTY CLAUSES

(a) Late Deliveries

- (1) In case of five (5) delayed deliveries beyond the last day of the stipulated delivery date range on the discharge port, after the stipulated delivery date as set out in the nomination procedure, **GPA** reserves the right to terminate the present contract by his written notification, without obligation to indemnify the **CONTRACTOR**.
- (2) **CONTRACTOR** accepts to pay **GPA** for every delayed delivery beyond the last day of the five (5) days stipulated delivery date range as set out in the nomination procedure, a penalty equivalent to:
 - \$0.30/MT multiplied by the Bill of Lading quantity for every day of delay if delivery is less than three days late.
 - \$0.60/MT multiplied by the Bill of Lading quantity for every day of delay if delivery is more than three days late.

In case of delay due to **GPA**'s fault or Force Majeure, the time of delivery shall be correspondingly extended, the **CONTRACTOR** waiving any respective claim against **GPA**.

(b) Quality Outside Contractual Specifications

In the event that any fuel, according to the analysis results of either the composite vessel sample or the "Umpire" sample has one or more quality characteristics outside the contractual specifications set in Section 10, then in addition to any other rights or remedies available to the **GPA** under this contract a penalty will be imposed according to the following:

- (1) If the Asphaltenes content exceeds the specifications limits then for every ONE-HALF percent (0.5%) or part thereof will be a price reduction of zero point one percent (0.10%) on the price per metric ton.

(2) If the Vanadium content exceeds the specifications limits then for every 10 part per million (10 ppm) or part thereof there will be a price reduction of zero point one per cent (0.10%) on the price per metric ton.

(3) If the Sodium content exceeds the specifications limits then for every 10 part per million (10 ppm) or part thereof there will be a price reduction of zero point one per cent (0.10%) on the price per metric ton.

(4) If the Al+Si content exceeds the specification limit then for every one part per million (1 ppm) there will be a price reduction of zero point zero two per cent (0.02 %) on the price per metric ton.

(5) If the viscosity exceeds the specification limit then for every 10 cSt or part thereof, there will be a price reduction of zero point one per cent (0.10%) on the price per metric ton.

(6) If API exceeds the specification limit then for every zero point one degree (0.10°) thereof, there will be a price reduction of zero point zero two per cent (0.02 %) on the price per metric ton.

(7) If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of- Specification heating value and the Guaranteed Heating Value specified in Section 10, multiplied by the Bill of Lading Quantity.

(8) If the bottom sediment and water exceeds the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in Section 10 multiplied by the Bill of Lading Quantity.

If any other quality parameter (besides the ones stated in) exceeds the specifications' limits, then a penalty will be agreed between **GPA** and **CONTRACTOR**.

It is expressly agreed that the present penalty clauses shall be imposed regardless of whether damages were or not suffered by the **GPA** due to the delay in delivering the fuel and fuel quality outside contractual specifications, and that the **GPA** reserves the right to claim cumulatively both the amount of the penalty clauses and indemnification for every direct damage suffered by him due to **CONTRACTOR** non-contractual actions or omissions. If during the period of this contract the **GPA** is forced to purchase fuel oil in order to maintain the **GPA**'s Power Stations on full commercial load as a result of failure on the part of the **CONTRACTOR** to deliver fuel oil in accordance with the terms of this contract (save for events of Force Majeure) any additional cost borne by the **GPA** over and above the price provided for in this Contract will be liable to be

refunded to the **GPA** either by payment from the **CONTRACTOR** or by way of reduction from his debts to the **CONTRACTOR** or from the Good Performance Bond of the Contract, or partially from both.

GPA reserves the right to retain the amount of the penalty clauses from his debts to the **CONTRACTOR** or from the Good Performance Bond of the Contract, or partially from both.

Notwithstanding the above conditions, **GPA** reserves the right to reject any or all deliveries that fail to conform to the quality requirements specified in Schedule A.

SECTION 31. DEFAULT

“If the PARTY refuses or fails to perform any of their obligations under this agreement, 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 Agreement 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 supply from another source upon notification to CONTRACTOR either by e-mail or in writing. Fuel 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 32. 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 33. 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.

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 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 delivery. **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 supply not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) **Right to Supplies.**

GPA may require the **CONTRACTOR** to transfer title of fuel oil cargo in transit to Guam at the time of receipt by Contractor of **GPA's** Notice of Termination.

(d) **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 Guam Uniform Commercial Code, and the Contract price of the fuel supply not terminated.

(3) Absent complete agreement under subparagraph (1) 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 34. 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 35. COVENANT AGAINST CONTIGENT FEES

The **CONTRACTOR** warrants no person or selling agency has been employed or retained to solicit or secure the Contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agency maintained by the **CONTRACTOR** for the purpose of securing business. For breach or violation of this warranty, **GPA** shall have the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

SECTION 36. NOTICE

Except as otherwise expressly specified herein, any notice to be given hereunder by either party to the other shall be deemed sufficiently given if in writing and enclosed in an envelope properly stamped and addressed to the party at the address set forth in this section, and deposited in the United States mail or by International courier. Either party may change its address by giving FIFTEEN (15) days prior written notice to the other party. Such address until further notice shall be:

GPA: General Manager
Guam Power Authority
Post Office Box 2977
Hagatna, Guam 96932-2977
TELEFAX: (671) 648-9225

CONTRACTOR: _____

SECTION 37. 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 38. 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 39. TIME

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

SECTION 40. 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 the **AUTHORITY**.

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 41. DESCRIPTIVE HEADINGS

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

SECTION 42. 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 43. 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 44. 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 45. 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 46. 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 47. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY

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

SECTION 48. RESTRICTION AGAINST CONTRACTOR EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES

GCA 5 §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 49. 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- -20**. 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 Name and 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

RESIDUAL FUEL OIL NO.6

Item	Test Parameter	Unit of Measure	Approved Test Method	Acceptable Alternate Test Methods	Minimum Allowed Value	Maximum Allowed Value	Comments
1	Sulphur Content	% mass	ASTM D-4294	ASTM D-2622	N/A	LSFO = 1.19 HSFO = 2.00	
2	Sulphur Mercaptan	Ppm (g/kg)	ASTM D-3227	UOP 163		100	
3	Pour Point	Deg C	ASTM D-97	N/A	N/A	21	
4	Flash Point	Deg C	ASTM D-93	N/A	66	N/A	
5	Kinematic Viscosity	cSt at 50 °C	ASTM D-445	ASTM D-2161		175	
6	Sediment By Extraction	% mass	ASTM D-473	N/A	N/A	0.05	
7	Water By Distillation	% by Volume	ASTM D-95	N/A	N/A	0.50	
8	Vanadium Content	Parts Per Million	ASTM D-5708	a)ASTM D-5184 b)ASTM D-5863 c) IP 501 d) IP 433 e) ISO 14597	N/A	90	
9a	Silicon Content	Parts Per Million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A	Combined Al + Si Not to exceed 70 ppm. Al not to exceed 30 ppm.	Individual results to be reported separately
9b	Aluminum Content	Parts Per Million	ASTM D-5184	a) IP 470 b) IP 377 c) ISO 10487 d) IP 501	N/A		
10	Guaranteed Gross Heating Value (HHV)	Million BTU Per US Barrel	ASTM D-240	N/A	6.10	N/A	
11	Micro- Carbon Residue	% mass	ASTM D-4530	ASTM D-5245 ASTM D-189 (see comments)	N/A	10	
12	Ash	% mass	ASTM D-482	N/A	N/A	0.10	
13	Asphaltenes	% mass	ASTM D-6560	IP 143	N/A	5	
14	Sodium	Ppm	ASTM D-5863/B	ASTM D-5708/B IP288 IP 501	N/A	40	
15	Total Sediment (Existent)	% mass	ISO 10307-2	ASTM D-4870 IP 377	N/A	0.10	
16	Compatibility	a) Cleanliness ratio b) Compatibility ratio	ASTM D-4740	N/A	N/A	a) 1 b) 1	a) to be reported from load port b) to be determined on arrival Guam unless otherwise notified in the specific instance. See Note.
17	API Gravity		ASTM D-287	ASTM D-1298 and conversion	12.1	23.0	
18	Density @ 15 °C	Kg/L	ASTM D-287	ASTM D-1298 ASTM D-4052		0.9855	
19	Odor				Report		See Note
20	Hydrogen Sulfide content (in liquid phase)	Mg/kg	IP-399	IP-570	N/A	2.0	See Note
21	Used lubricating Oil (ULO)				The fuel shall be free of ULO		See note
	Zinc	Mg/kg	IP 501	IP 470		10	
	Phosphorus	Mg/kg	IP 501	IP 500		10	
	Calcium	Mg/kg	IP 501	IP 470		30	

The Authority reserves the right to require the supplier to add and to conduct additional tests as necessary.

Notes on Schedule A:

Item 16: Compatibility

CONTRACTOR shall ensure that each shipment of fuel oil is compatible with a representative sample of the previous shipment of the same grade. Testing for compatibility will be conducted at load port according to the test method ASTM D-4740 mutually agreed between both parties and the **CONTRACTOR** will guarantee spot rating of 1.

Item 19: Odour.

The odor shall be typical and characteristic of mild hydrocarbon smell, but must not be unusually strong, repulsive, or obnoxious. The fuel delivered shall be subject to inspection by regulatory agencies such as the United States Environmental Protection Agency (USEPA), or by an independent third party inspector, should issues related to odour arise. In the event that such unusually strong, repulsive, or obnoxious odor is detected and is deemed due to the quality of the product delivered by the Contractor, the product shall be replaced at the Contractor's expenses.

Item 20:

Hydrogen Sulfide in Liquid Phase. Individual samples shall be drawn on the ship compartments. Report shall be based on the mathematical average of the test results.

Hydrogen Sulfide in Vapour. The Contractor or its agent is required to disclose the Hydrogen Sulfide concentration for each cargo compartment on a daily basis upon sailing from the load port. The Contractor shall ensure that the Hydrogen Sulfide concentration in vapour phase on board the vessel does not exceed 80 ppm prior to cargo arrival on Guam. In the event that the Hydrogen Sulfide levels are exceeded on cargo arrival, the vessel will be required to leave the Guam port and de-gas to the required concentration and all costs shall be borne by the Contractor.

Item 21: Used Lubricating Oil.

A fuel shall be considered to be free of ULO if one or more of the elements zinc, phosphorus and calcium are below or at the specified limits.

All three elements shall exceed the same limits before a fuel shall be deemed to contain ULO.

SCHEDULE B: F-1 DOCK PORT AND TERMINAL INFORMATION
HANDBOOK

SCHEDULE C: F-1 DOCK FACILITY- VESSEL VETTING PROCEDURE