BEFORE THE GUAM PUBLIC UTILITIES COMMISSION

GWA DOCKET NO. 22-07

PETITION TO APPROVE GWA'S PROCUREMENT AWARD FOR REGULAR UNLEADED AUTOMOTIVE GASOLINE, AND DIESEL FUEL OIL NO. 2 FOR GWA'S TRANSPORTATION **FLEET**

COMES NOW, the GUAM WATERWORKS AUTHORITY ("GWA"), by and through its counsel of record, THERESA G. ROJAS, ESQ., and hereby files its Petition for PUC approval to award a three-year contract with two one-year options to renew for regular unleaded. automotive gasoline, and diesel fuel oil No. 2 for GWA's transportation and heavy equipment fleet.

BACKGROUND

On November 24, 2021, GWA advertised Invitation for Bid (IFB) GWA IFB-2022-01, for Regular Unleaded, Automotive Gasoline and Diesel Fuel Oil No. 2 to supply GWA's transportation and heavy equipment fleet. Five interested bidders picked up bid packets. Only two (2) bidders responded submitting cost bids. Pursuant to the bid terms, all bidders were to

GWA Docket 22-07

PUC Review: Petition to Approve the Award for the Multi-year Procurement of Automotive Gasoline, Regular Unleaded, and Diesel Fuel Oil No. 2 for GWA Transportation Fleet. Page 1 of 3

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provide an invoice price totaling the previous month daily postings average¹ + a premium fee. All bids received applied bid reference prices (previous month daily postings average) as of October 27, 2021, as cost estimates together with the bidder's fixed premium fees proposed. Of the two (2) responses received, IP&E Holdings, LLC offered the lowest cost bid offering the following price per gallon:

(a) Diesel Fuel Oil No. 2:

\$2.802 per gallon

(b) Automotive Gasoline, Regular Unleaded \$2.925 per gallon

The above-priced bid was responsive and was recommended for conditional award on March 2, 2022.

REQUEST FOR APPROVAL

GWA now desires to award its supply contract for GWA IFB-2022-01 for Regular Unleaded, Automotive Gasoline and Diesel Fuel Oil No. 2. Specifically, GWA seeks to award a three-year contract with an option to extend for two (2) additional one (1) year terms to IP&E Holdings, LLC for Regular Unleaded Automotive Gasoline and Diesel Fuel Oil No. 2

Based on GWA's best estimates, the bid award will now exceed GWA's obligating authority of \$1,000,000 under the Contract Review Protocol. Using our estimates, the bid cost at \$2.925 per gallon for Regular Unleaded Automotive Gasoline and \$2.802 per gallon for Diesel Fuel No. 2 multiplied GWA's average quantity purchased of 85,000 gallons per year² for regular unleaded fuel and 32,000 gallons per year³ for diesel fuel will cost \$338,289.00 annually. A three-

¹ The previous month daily posting average may fluctuate and is determined on a monthly basis by Platts' Asia-Pacific Market Scan Oil Price for Singapore cargoes. See Section 1.03. Price Determination. p.17 GWA IFB-2022-01.

² GWA's average quantity purchased for Regular Unleaded, Automotive Gasoline as estimated at Section 5(a) p.10 of GWA IFB-2022-01

³ GWA's average quantity purchased for Diesel Fuel Oil No. 2 as estimated at Section 5(b) p.10 of GWA IFB-2022-01

year contract term using these figures totals an award of \$1,014,867.00. This three-year amount plus the sum of two additional 1-year option renewal periods at \$676,578.00 for both years totals \$1,691,445.00 for IP&E's multi-year contract term. Therefore, GWA hereby petitions the PUC, pursuant to its Contract Review Protocol, to approve GWA's award for the Multi-year Procurement of Regular Unleaded, Automotive Gasoline and Diesel Fuel Oil No. 2 for the GWA Transportation Fleet up to \$1,691,445.00 with the PUC's 20% contingency above the authorized amount. Funding for the procured services will come from GWA's operating revenues, and fuel is required for GWA's vehicle and equipment fleet.

In support of this Petition, approval for the respective procurement is anticipated by the CCU during its April 26, 2022, regular meeting via GWA Resolution 15-FY2022. Said draft resolution and its supporting exhibits are attached as Exhibit A and are incorporated by reference as if fully set forth herein. GWA Resolution No. 15-FY2022 is forthcoming and shall be filed to the PUC for review and consideration once final and approved by the CCU.

CONCLUSION

Based on the foregoing, GWA requests the PUC allow GWA to award the above-mentioned contract relative to GWA IFB-2022-01 for Automotive Gasoline and Diesel Fuel to IP&E Holdings, LLC as it is reasonable, prudent, and necessary.

RESPECTFULLY SUBMITTED this _____ day of April, 2021.

THERESA G/ROJAS GWA Genera Counsel



CONSOLIDATED COMMISSION ON UTILITIES Guam Power Authority | Guam Waterworks Authority P.O. Box 2977 Hagatna, Guam 96932 | (671)649-3002 | guamccu.org

GWA RESOLUTION NO. 15-FY2022

RELATIVE TO APPROVING THE AWARD FOR THE MULTI-YEAR PROCUREMENT OF AUTOMOTIVE GASOLINE, REGULAR UNLEADED AND DIESEL FUEL OIL NO. 2 FOR GWA TRANSPORTATION FLEET, GWA IFB. NO 2022-01

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities ("CCU") has plenary authority over financial, contractual, and policy matters relative to the Guam Waterworks Authority ("GWA"); and

WHEREAS, the Guam Waterworks Authority ("GWA") is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, under 12 G.C.A. § 14105, the Consolidated Commission on Utilities ("CCU") has plenary authority over financial, contractual and policy matters relative to the Guam Waterworks Authority ("GWA"); and

WHEREAS, the Guam Waterworks Authority ("GWA") is a Guam Public Corporation established and existing under the laws of Guam; and

WHEREAS, GWA has advertised by an Invitation for Bid (IFB) 2022-01 (Exhibit A) bid proposals from experienced and responsive bidders to provide GWA with Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded; and

WHEREAS, there were two (2) responsive bidders who offered Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded meeting the requirements of IFB 2022-01; and

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WHEREAS, the cost for Diesel Fuel Oil No. 2 and Automotive Gasoline under the 1 proposed procurement 3-year term would exceed \$1,000,000,000 annually.; breakdown of cost 2 as follows: 3 4 **Diesel Fuel cost:** Option 2 year. 1 year Term: 5 \$2.802 per gallon 6 \$2.802 per gallon Yearly Usage: 32,000 Gallons. Yearly Usage: 32,000 Gallons. 7 Yearly Cost: \$89,664.00 Yearly Cost: \$89,664.00 3 Year Cost: \$268,992.00 2 Year Cost: \$179,328.00 9 (Estimated Only) 10 Automotive Gasoline Regular Unleaded: Option 2 year. 1 year Term: 11 \$2.925 per gallon 12 \$2,925 per gallon Yearly Usage: 85,000 Gallons. Yearly Usage: 85,000 Gallons. 13 Yearly Cost: \$248,625.00 Yearly Cost: \$248,625.00 14 3 Year Cost: \$745,875.00 2 Year Cost: \$497,250.00 15 (Estimated Only) 16 3-Year Term: Option 2 Years. 17 \$268,992.00 Diesel Fuel \$179,328.00 18 Gasoline Regular Unleaded \$745,875.00 \$497,250.00 19 20 Total Cost: \$1,014,867.00 21 \$676,578.00 22 23 WHEREAS, the IFB 2022-01 offers were evaluated by GWA's review committee for 24 IFB 2022-01 ("GWA review committee"); and 25 26 WHEREAS, GWA's review committee determined that IP&E Holding, LLC Guam 27 offered the lowest cost of \$2.925 per gallon for Automotive Gasoline, Regular Unleaded and 28 29 \$2.802 per gallon for Diesel Fuel Oil No. 2. (Exhibit B "Recommendation of Award.") // 30 31

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WHEREAS, GWA's review committee determined the prices offered to be fair and reasonable and responsive and the bidder responsible; and

WHEREAS, GWA accepts IP&E Holding, LLC's bid proposal of \$2.925 per gallon for Automotive Gasoline, Regular Unleaded and \$2.802 per gallon for Diesel Fuel Oil No. 2 as the lowest responsive and responsible bidder for GWA's Transportation Fleet. (Exhibit C "Copy of Bidder's Proposal"); and

WHEREAS, GWA issued the Notice of Award to IP&E Holding, LLC on 03/02/2022 (Exhibit D "Notice of Award."); and

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WHEREAS, funding for this project will be from GWA Operation and Maintenance revenues.

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WHEREAS, GWA management seeks CCU authorization to proceed with the procurement, and an approval from the CCU to submit IFB 2022-01 for the Diesel Fuel No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA Transportation Fleet (See Exhibit A GWA IFB 2022-01) to the PUC for their approval.

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WHEREAS, under the Guam Public Utilities Commission's Contract Review Protocol for the GWA, for contract amounts which are anticipated to exceed One Million Dollars (\$1,000,000.00), CCU approval and permission to petition the PUC for contract approval is necessary.

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WHEREAS, the total contract amount for the Automotive Gasoline, Regular Unleaded and Diesel Fuel No. at the prices offered are estimated to be approximately One Million Fourteen Thousand Eight Hundred Sixty-Seven Dollars (\$1,014,867.00) for the first three years and an additional Six Hundred Seventy-Six Thousand Five Hundred Seventy-Eight Dollars (\$676,578.00) total under the same contract terms for two (2) additional 1-year periods.

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SECRETARY'S CERTIFICATE

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I, Michael T. Limtiaco, Board Secretary of the Consolidated Commission on Utilities as evidenced by my signature above do hereby certify as follows:

The foregoing is a full, true and accurate copy of the resolution duly adopted at a regular meeting by the members of the Guam Consolidated Commission on Utilities, duly and legally held at a place properly noticed and advertised at which meeting a quorum was present and the members who were present voted as follows:

AYES: NAYS: ABSENT: **ABSTAIN:**



GUAM WATERWORKS AUTHORITY

"Better Water, Better Lives."

Gloria B. Nelson Public Service Building | 688 Route 15 | Mangilao, Guam 96913 Tel: (671) 300-6846

Issues for Decision

Resolution No. 15-FY2022

Relative to Approving the Award for the Multi-Year Procurement of Automotive Gasoline, Regular Unleaded and Diesel Fuel Oil No. 2 for GWA Transportation Fleet and Heavy Equipment; GWA IFB No. 2022-01

What is the project's objective and is it necessary and urgent?

To supply GWA Diesel Fuel Oil No. 2 and Regular Unleaded Automotive Gasoline for GWA's Transportation Fleet and Heavy Equipment, and this procurement is necessary and urgent to provide and meet GWA's daily operational needs and activities.

Where is the location?

Fuel is needed Agency-wide for all GWA's vehicle and equipment fleet.

How much will it cost?

Estimated fuel cost for Automotive Gasoline Regular Unleaded with IP&E Guam is as follows:

• \$2.925 per gallon at 85,000 gallons of unleaded gasoline per year at a cost of \$248,625.00

Estimated fuel cost for Diesel Fuel No. 2 with IP&E Guam is as follows:

\$2.802 per gallon at 32,000 gallons of diesel per year at a cost of \$89,664.00

Grand Total: \$338,289.00 estimated cost annually.

When will it be completed?

Fuel Services for GWA's vehicle and equipment fleet will be on-going for the duration of the initial 3-year contract with the option to renew for an additional 2 years, 1-year term.

What is the funding source?

M&O

The IFB/BID responses (if applicable):

- Mobile Oil Guam Inc.
- IP&E Holding, LLC

EXHIBIT A

GWA IFB 2022-01

INVITATION TO BID

The GUAM WATERWORKS AUTHORITY, will receive sealed bids for Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA Transportation Fleet, in GWA IFB. NO. 2022-01. Bids will be accepted until 10:00 a.m. Chamorro Standard Time, DFC 15, 2021 at the GWA Procurement Office first floor, located at the Gloria B. Nelson Public Services Building in Mangilao at which time and place all bids will be publicly opened and read aloud. All bids must be accompanied by a Bid / Performance Bond in the amount of fifteen percent (15%) of the total bid price. Bid security may be bid/performance bond, Surety Bond, certified check or cashier's check made payable to Guam Waterworks Authority. A non-refundable amount of \$15.00 is required for the purchase price of every set of bidding documents which are available at the GWA Procurement Office. Bidders can download a bid package at www.guamwaterworks.org without charge, although vendors are strongly encouraged to contact GWA via e-mail at psbids@guamwaterworks.org or visit GWA Procurement to register to ensure that updated information, notices or bid amendments are distributed to you.

GWA reserves the right to revise or reject any or all proposals and to waive any minor imperfection in the bid proposal in the interest of the Guam Waterworks Authority

Miguel C. Bordailo, P.E. General Manager

GWA STAMP ISSUE DATE:



GUAM WATERWORKS AUTHORITY

Gloria B. Nelson Public Service Building 688 Route 15, Mangilao GU 96913

Dear Interested Bidder:

Attached herewith please find the Invitation for Bid by the Guam Waterworks Authority (GWA), IFB-GWA-2022-01 relative to the supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the GWA Transportation Fleet. The Fuel supply contract shall be for a three (3) year term to commence on or about <u>JANUARY 20, 2022</u> and shall continue until midnight of <u>JANUARY 20, 2025</u>.

The IFB is divided into two (2) parts:

Part A: The solicitation

Part B: Bid submittal documents (Contract and Offer)

Part A consists of three (3) sections:

Section I, gives the general background and summary of the solicitation. Section II, provides the instruction procedures and requirements for bidders. Section III, details Bid Bond requirements.

Part B contains the Bid Submittal Documents consisting of the Proposed Contract and Bid Offer. The Bid Offer must be completed and submitted in response to this IFB along with all other documents and requirements as specified in the solicitation. Failure to submit, provide, or comply with any or all requirements may be grounds to declare a bid non-responsive.

All interested bidders are advised to read the instructions carefully and tender their offers in conformance to the material aspects and requirements of the IFB.

Si Yu 'os Ma'ase

Miguel C. Bordallo, P.E.

General Manager

INVITATION FOR BID NO. GWA-2022-01

FOR SUPPLY OF DIESEL FUEL OIL NO. 2

and

REGULAR UNLEADED AUTOMOTIVE GASOLINE

FOR GWA'S
TRANSPORTATION FLEET
AND

HEAVY EQUIPMENT

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PART A

GUAM WATERWORKS AUTHORITY'S INVITATION FOR BIDS TO SUPPLY FUEL TO GWA'S VEHICLE FLEET (DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED)

Section I: BACKGROUND AND SUMMARY OF SOLICITATION

The Guam Waterworks Authority ["GWA" or "Authority"] is a Guam public corporation. GWA is the sole non-military supplier of water service on the Island of Guam. The Authority desires to solicit and secure a Fleet Fuels (Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded) supply contract.

GWA is hereby soliciting bids for the supply of Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for an initial three (3) year term, with options to extend for two (2) additional one (1) year renewal terms of twelve (12) months per renewal term upon mutual agreement of both parties.

GWA vehicle and equipment fleet consists of approximately 163 light and medium duty vehicles and 56 pieces of heavy equipment.

Section II: INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.

1. Time, Schedule and location of bid submittal and opening.

The original bid must be signed in ink by a person authorized to submit bids on behalf of the bidder. Bid must be delivered to GWA Procurement Office, first floor located at Guam Waterworks Authority, Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, GU 96913.

The sealed submittal envelope shall-be marked on the lower left corner "SEALED BID, DIESEL FUEL OIL NO. 2 AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED SUPPLY, IFB NO. GWA-2022-01, BID OPENING, DEC. 15. 2021 at 10:00 a.m. Chamorro Standard Time."

All questions regarding the bid must be submitted in writing and be delivered personally, via US mail, express delivery, fax or email directed to the following:

GWA Procurement Office
Guam Waterworks Authority
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, GU 96913
E-mail: psbids@guamwaterworks.org
Fax. No.: (671) 649-3750

2. Form.

All bids must be in writing and must be signed by a representative of the bidder having authority to submit such bids. Offers submitted in response to this solicitation shall be in terms of United States currency and in the English language. The bids should respond in an organized fashion to all the requirements of this Invitation for Bids. <u>Bidders must submit</u> along with their bid package, a fully completed Offer, Bid Bond, and other information pertaining to the responsibility of Bidder. Failure to submit any of these bid documents shall be grounds to declare a bid non-responsive.

3. Receipts, Registration of Bids and Confidentiality.

The sealed bids shall be opened publicly on <u>DFC 1 52021</u>, at 10:00 a.m. Chamorro Standard Time.

For the purposes of this solicitation and bid submission, the laws of Guam governing confidentiality shall govern. If the Bidder submits confidential data with their bid, the bidder must clearly label the information to be protected as "confidential" in each and every place the information is located. GWA reserves the right to determine whether such information is in fact able to be protected from public review under the laws of Guam. Information deemed confidential and approved by GWA for such protection, shall be used only by GWA for bid evaluation purposes; provided however, that if a Contract is awarded to this bidder as a result of, or in connection with the submission of this data, the GWA shall have the right to duplicate, use, or disclose the data to the extent provided in the Contract. Moreover, this restriction does not limit the GWA's right to use information contained in the data if it is obtained from another source without restriction. The General Manager of GWA or his designee shall examine the bids and determine the validity of any

requests for non-disclosure of data as requested. Bids and modifications shall be timestamped upon receipt and held in a secure place by GWA Procurement Office until the established opening date.

4. Modification or Withdrawals of Bids.

Bids may be modified or withdrawn by written notice from a person authorized to sign the bid, received in the office of GWA Procurement at any time prior to the time and date set for the opening scheduled for DEC 15, 2021 at 10:00 a.m. Chamorro Standard Time.

Facsimile or email written withdrawals shall also be accepted provided they are in fact received by GWA procurement division personnel and confirmed by such personnel prior to the time and date set for the bid opening scheduled. There shall be no modifications or withdrawals after the bid opening date.

5. Late Bids, Late Withdrawals and Late Modifications.

Any bid received after the time and date set for receipt of bids is late and shall not be considered. Any withdrawal or modification of a bid received after the time set for the opening of bids as specified herein is also late and shall not be considered.

6. Award.

The award of the Contract will be made by GWA to the lowest responsive and responsible bidder whose bid for each Item that conforms to the Invitation for Bid and would be most advantageous to GWA, in terms of price and all other factors considered as determined by GWA as provided in the bid. GWA reserves the right to award the Contract to a vendor other than the lowest price offeror and to reject any or all offers if it is determined to be in the best interest of the Territory of Guam. A written Notice of Award (or acceptance of offer) will be mailed or otherwise furnished via facsimile, or electronic email transmittal to the successful bidder within the time for acceptance specified in the offer. GWA reserves the right to waive informalities and minor irregularities in bids received. In the evaluation process, the following factors will be considered:

- (a) Price;
- (b) Whether the bidder's ultimate offer meets and conforms to the announced requirements of GWA in all material respects (specifications);
- (c) Service rendering capability, status as producer, refiner, broker, or agent and his direct financial responsibility;
- (d) Overall clarity and presentation of bid;
- (e) Whether the bidder has:
 - (1) the available appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate its capability to meet all Contractual requirements;
 - (2) a satisfactory record of performance;

(3) a satisfactory record of integrity;

(4) qualified legally to contract with the territory and properly licensed to conduct such business on Guam; and

(5) supplied all necessary information in connection with the inquiry concerning responsibility.

Bidder is responsible for providing adequate information on operating and petroleum supply experience and on financial status (i.e., annual report with audited financial statements) and references for use in evaluating its capabilities.

In addition to the evaluation criteria, GWA may require submission of descriptive literature, technical data, or other material. It may also require accomplishing any of the following prior to award:

(a) Inspection or testing of a product sample prior to award for such characteristics, as quality, or workmanship;

(b) Examination of such elements as appearance, grade, texture, or

(c) Other examinations to determine whether it conforms to any other purchase description requirements.

4. Cancellation of Solicitation; Delays.

GWA reserves the right to cancel or to withdraw this Invitation for Bid, to delay determination on this Invitation, to reject all bids or any individual bid in whole or in part, at any time prior to the final award or to waive any minor informalities or irregularities of any bid. In case of cancellation or rejection, bid bonds will be concurrently returned. The reasons for the cancellation, delay or rejection shall be made a part of the procurement file and shall be available for public inspection.

- (a) <u>Rejection of all Bids</u>. Prior to the final award, all bids may be rejected in whole or in part when GWA determines in writing that such action is in GWA's best interest for reasons including, but not limited to:
 - (1) The supplies and services being procured are no longer required;
 - (2) Ambiguous or otherwise inadequate specifications were part of the solicitation;
 - (3) The solicitation did not provide for consideration of all factors of significance to the territory;
 - (4) Prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
 - (5) All otherwise acceptable bids received are at clearly unreasonable prices;
 - (6) There is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

When a solicitation is canceled or rejected prior to final award, notice of cancellation or rejection shall be sent to all bidders and all bid bonds shall be returned. The reasons for cancellation or rejection shall be made part of the procurement file and shall be available for public inspection.

- (b) <u>Rejection of Individual Bids</u>. Any individual bid may be rejected in whole or in part when in the best interest of the Territory of Guam as determined by GWA in its sole discretion. Reasons for rejecting a bid include, but are not limited to:
 - (1) The bidder is non-responsive or responsible pursuant to Guam's procurement laws, rules and regulations;
 - (2) The bid is not responsive, as it does not conform, in all material respects, to the Invitation for Bids;
 - (3) The quantity and/or quality supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptable criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
 - (4) The bid is not the lowest responsive bidder, which meets the requirements and criteria set forth in the Invitation for Bids;
 - (5) The bidder has failed to submit to the GWA procurement office, the necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.
 - (6) Any changes as initiated by the bidder to the attached Contract form constitute a basis to declare the bid submittal as non-conforming.

5. Fuels To Be Supplied.

Bidder agrees to furnish and GWA agrees to accept and pay for all of Diesel Fuel Oil No. 2 and/or Automotive Gasoline, Regular Unleaded (both fuels referred to in the solicitation as Fleet Fuels) requirements for the Authority's transportation fleet for the term of the Contract. <u>Estimated</u> total quantity for the fleet's fuel shall be:

- (a) Diesel Fuel Oil No. 2: approximately 32,000 gallons per year (estimated).
- (b) Automotive Gasoline, Regular Unleaded: approximately 85,000 gallons per year (estimated).

The Items will be awarded individually as follows:

Item A Diesel Fuel Oil No.2 _____/gallon.

Item B Automotive Gasoline Regular Unleaded _____/gallon.

The fleet fuels supply shall be provided from Bidder's service stations (or from designated

stations if so agreed upon between the Contractor and GWA Procurement/ Supply

Administrator). The commencement of the Fleet's fuel procurement shall be as soon as possible following award of bid and signing of Contract.

6. Contract Term.

The Contract Term shall be for three (3) years, with an option to extend for one (1) additional two (2) year renewal terms upon mutual agreement of both parties. The contract price for each year shall be at the same price as contract price offer and all other terms remain unchanged unless other terms are agreed upon between the parties. The contractual obligation of GWA to the successful bidder is subject to the availability of funds. In the event funds are not available for any succeeding months under a valid contract term, the remainder of such Contract shall be cancelled and the Contractor shall be reimbursed for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to the termination. The Authority shall notify Contractor in writing within sixty (60) days if funds are unavailable.

7. Contract Price.

The total price per U.S. gallon delivered TO GWA site shall be inclusive of all costs, insurance, freight and liabilities incurred prior to delivery to GWA.

8. Warranty and Claims.

Contractor shall provide both express and implied warranties of merchantability and warrants that the diesel fuel oil no. 2 and automotive gasoline, regular unleaded, meet the specifications as prescribed in the pertinent sections of the Contract. Claims against the Contractor on account of quality, defects in, loss or damage to product shall be given in writing by GWA within thirty (30) days from date of fleet's fuels procurement.

Product and Quality of Fleet's Fuels:

The Fleet fuels delivered hereunder shall have the physical and chemical characteristics as described in Section 2.01 of this bid.

10. Contract Principals.

It is important that Bidder fully identify persons and entities having any interest in the Contract. GWA reserves the right to require Bidder for complete disclosures of owners or stockholders of any entity having an interest in the Contract.

11. Insurance.

The responsible bidder shall be required to provide proof of insurance, to include coverage for Public General Liability, Workmen's Statutory Compensation Insurance, and Employer's Liability Insurance.

12. Contract Controlling.

The comments contained herein are for the use of the bidders and to the extent there is any conflict between the items set forth in this solicitation instruction and the Contract, the Contract language, including any amendments thereto, shall govern.

Section III. BID & PERFORMANCE BOND REQUIREMENTS.

A. BID BOND REQUIREMENT:

All bidders are required to submit a bid security in the amount of 15% of their total bid amount. Failure to submit a proper bid bond will cause the bid to be rejected. The bid bond amount is to be determined by using the total estimated gallons used by GWA for each fuel type multiplied by the per gallon bid amount then add the individual totals for each fuel type together.

The performance bond form that is attached hereto must be used by the bidder and may not be modified without the written consent of GWA.

THE BID GUARANTEE MAY BE IN THE FORM OF:

- a. Cashier's Check or Certified Check
- b. Surety Bond Valid only if accompanied by:
 - i. Current Certificate of Authority;
 - ii. Power of Attorney issued by the Surety to the Resident General Agent;
 - iii. Power of Attorney issued by two (2) major officers of the Surety to whoever is signing on their behalf.

B. PERFORMANCE BOND REQUIREMENT

The successful bidder will be required to submit a performance bond in an amount equal to 100% of the total bid price established under the bid bond process above and it shall be made payable to GWA in the form of a surety issued by a company licensed to conduct business in Guam. The performance bond must be submitted not later than 15 days after the Notice of Award is issued. The performance bond shall continue in full force and effect until after delivery of the supplies or services required by the contract awarded to the Contractor under the associated Invitation for Bid is completed.

The performance bond form that is attached hereto must be used by the bidder and may not be modified without the written consent of GWA.

PART B

BID SUBMITTAL DOCUMENTS

- I. PROPOSED GWA FLEET FUELS SUPPLY CONTRACT (DIESEL FUEL OIL No. 2 and AUTOMOTIVE GASOLINE, REGULAR UNLEADED)
- II. BID OFFER
- III. BID BOND

NOTICE

Please find the Bid Submittal documents, Proposed Contract and Bid Offer. The following Proposed Sample Contract is intended to provide the bidder with sample terms that GWA intends to use as part of the final contract to be used in conjunction with this bid. Any final contract under this bid shall contain terms and conditions that are acceptable to GWA. The submission of a bid by any vendor is proof of each bidder's acceptance of the terms and conditions contained in the Proposed Sample Contract and that they will not challenge said terms and conditions. Please be advised of the requirement of furnishing the bid bond in the designated amount and other data or information pertaining to responsibility and other requirements specified in the Solicitation that must be submitted together with the aforementioned documents.

PROPOSED SAMPLE CONTRACT FOR

GWA FLEET FUEL SUPPLY DIESEL FUEL OIL No. 2 AND

REGULAR UNLEADED AUTOMOTIVE GASOLINE

PREAMBLE

This Contract, by and between Guam Waterworks Authority ("GWA"), a Guam publicorporation whose business address is Gloria B. Nelson Public Service Building 588 Route 15 Mangilao, GU 96913, and	C
"Contractor") whose business address is	
and having Guam Business License No.	

WITNESSETH:

RECITALS

WHEREAS, the Authority has publicly issued an Invitation for Bid, for a three (3) year Fleet Fuel Supply Contract, Invitation for Bid, GWA IFB. NO. 2022-01, for the supply of the Authority's Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority's Transportation Fleet; and

WHEREAS, the Authority will award a Contract to the lowest responsible bidder whose bid conforms to the material aspects of the Invitation; and

WHEREAS, GWA finds that the aforementioned Contractor has submitted the lowest responsible bid for the products and/or services required hereunder.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto do hereby agree as follows:

SECTION 1

SECTION 1.01: FLEET FUELS TO BE SUPPLIED - DIESEL FUEL OIL NO. 2
AND AUTOMOTIVE GASOLINE, REGULAR UNLEADED:

Contractor agrees to furnish and deliver all the required Fleet Fuels: Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded, for the Authority's Transportation Fleet and GWA agrees to accept and pay for all Fleet Fuels delivered to GWA, meeting the specifications requirements for the term of the Contract.

The estimated requirement of Diesel Fuel Oil No. 2 is approximately Thirty-Two thousand gallons per year (32,000 gal/yr.) and Automotive Gasoline, Regular Unleaded is estimated at about Eighty-Five thousand gallons per year (85,000 gal/yr.) for the Authority's Transportation Fleet. Notwithstanding any estimated quantity set forth herein, the Contractor shall be responsible in supplying all the Fleet Fuels (diesel and unleaded gasoline), reasonably required by GWA, even if such quantities exceed the estimates provided above.

Fleet Fuel Cards. Contractor shall provide gas station fleet cards at no cost to GWA. Only employees carrying valid fleet cards shall be allowed to refuel at the gas stations. Contractor shall be responsible for all costs associated with providing fuel to unauthorized individuals. The Authority shall provide a list of employees and may add or delete names of employees authorized to use the gas station fleet card and GWA shall be responsible for all costs associated with its failure to provide updated employee listings to Contractor. Fleet cards shall be limited and restricted to refueling GWA official vehicles and Contractor shall be responsible for all costs associated with providing fuel to vehicles that are not official vehicles of GWA. The GWA General Manager may designate other vehicles which are allowed to be fueled in writing and GWA is responsible for all costs associated with its failure to maintain a proper vehicle listing.

- 1. GWA will require the vendor to issue fleet fuel cards for transacting fuel purchases.
- 2. Fleet card shall have electronically imprinted on it, name of driver or vehicle id, card no., and company name.
- Assign cards by individual drivers or vehicles description, or both, as authorized by GWA.
- 4. Card is restricted to fuel purchases only and fuel grade per bid.
- 5. The use of the fuel card is restricted to GWA owned or leased vehicles only.

Point of Sale Controls:

- 1. Require drivers to show valid vehicle ID or driver ID numbers at time of purchase.
- 2. Ability to set variable spending controls by amount of purchase.
- 3. Ability to restrict transactions for number of uses per day, week, or month
- 4. Ability to require Driver PIN or Odometer prompt for purchase
- 5. Provide printed sales invoice or slip with the point-of-sale data below, with the signature of driver on the invoice/slip transacting the sale.
- 6. Point of sale data in form of a sales invoice or slip to include information for the following: card number, fuel quantity (gallons purchased), type of fuel, name of driver and GWA employee number, vehicle id, date of purchase and location, price per gallon, time of day.
- 7. Provide point of sale data in electronic form, Microsoft Office Excel 2007 or later version.

SECTION 1.02: TERM.

The Contract Term shall be for three (3) years to commence when the contract is signed by the GWA General Manager, and shall continue until midnight of, (Date):

2025, with an option to extend for one (1) additional two (2) year renewal terms upon mutual agreement of both parties. The contractual obligation of GWA and Contractor is subject to the availability of funds. In the event funds are not available for any succeeding months, the remainder of such contract shall be cancelled and the Contractor shall be notified within sixty (60) days if funds are unavailable.

SECTION 1.03: CONTRACT PRICE.

The total contract <u>BID PRICE</u> per gallon delivered to <u>GWA Fleet point of delivery is</u> (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

- 1. Bid Price Offer:
- (a) Diesel Fuel Oil No. 2:

\$ _____per gallon

(b) Automotive Gasoline, Regular Unleaded:

S _____ per gallon

The BID PRICE is the sum of the fixed service fee (per gallon) and the bid reference prices as of October 27, 2021 posting in Platts' Asia-Pacific Market Scan Oil Prices are as shown:

Bid Reference prices:

Fleet Fuels

Reference Product Code

Reference Price

(a) Diesel Fuel Oil No. 2

Gasoil 10 ppm

\$2.302 per gallon

(b) Automotive Gasoline (Regular Unleaded)

Gasoline 92 unleaded

\$2.435 per gallon

PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10ppm (for Diesel Fuel Oil No. 2) and Gasoline 89 unleaded (for Automotive Gasoline, Regular Unleaded), for all the daily postings of the previous month in the Platt's Asia-Pacific Market scan, for Singapore cargoes, plus the Service Fee as calculated.

The gas stations should be properly labeled to indicate the product grade at its pump. In the event that the gas station pump has not fully converted to Ultra-Low Sulfur Diesel (ULSD) as set forth in Section 2.01, then the invoice price for Diesel Fuel Oil No. 2 delivered in any month shall be reduced and shall be based on the average of the effective prices reported for Gasoil Reg 0.5% Sulfur.

INVOICE PRICE CALCULATION FORMULA:

<u>INVOICE PRICE</u> = Previous Month daily postings average + Premium Fee

Sample data:

(a) Diesel Fuel Oil No. 2:

Sample Bid Price Offer = \$2.302 per gallon Premium Fee = \$1.020- \$0.82 = \$0.200 per gallon

(b) Automotive Gasoline, Regular Unleaded:

Sample Bid Price Offer = \$2.435 per gallon Premium Fee = \$1.273 - \$1.073= \$0.200 per gallon

Sample Invoice Price Calculation:

Delivery Month: January 2022

Diesel Fuel Oil No. 2:

Invoice Price = previous month average price + service fee

Previous Month's (October 27, 2021) daily postings average * = \$82.270/barrel = \$2.302/gal

Premium Fee (per sample data) = \$0.200 per gallon

Invoice Price = (\$1.145 + \$0.200) per gallon

Invoice Price = \$1.345 per gallon

This is the invoice price (in three decimal places) for Diesel Fuel Oil No. 2 purchases by GWA for the sample month of January 2022.

Remarks:

- 1. The same calculation procedure shall apply for Automotive Gasoline, Regular Unleaded pricing calculations.
- 2. The Contractor is required to submit to the Authority a monthly invoice price calculation report within the first five days of each report month. Reports must include the detailed pricing data comprising of the price postings.

The invoice price for the fuels (a) and (b), shall be the actual gallons received into GWA's fleet multiplied by the unit price as calculated and determined on a monthly basis in reference to Platts' Asia-Pacific Market Scan Oil Price. All invoices submitted must be accompanied by the product delivery receipts signed by the duly authorized personnel and the service station representative.

The contract price is effective and shall remain the same for the term of the CONTRACT in effect.

<u>SECTION 1.04:</u> <u>FLEET FUELS TO BE PURCHASED-DESIGNATED SERVICE</u> STATIONS:

All Fleet fuel purchases shall be at any of the Contractor's Service Stations unless otherwise agreed to by GWA. Fuel refilling shall be limited and restricted to GWA official and leased vehicles, and authorized personnel only. GWA agrees to provide and maintain a list of authorized vehicles and authorized personnel and provide Contractor with at least 72 hours written notice of any changes.

SECTION 1.05: TERMS OF PAYMENT.

Invoices for Fleet Fuels purchased pursuant to quantity (receipts) and quality prescribed under the terms of this Contract, shall be submitted on a monthly basis, based on the amount of gallons of fuels purchased by GWA. The payment term is thirty days (net) and the Authority shall promptly make payments within a reasonable time not to exceed a period of THIRTY (30) calendar days from the receipt of the invoice. All payments shall be based upon the received (invoiced) quantity and with properly sales data.

SECTION 1.06: WARRANTY AND CLAIMS.

Contractor shall provide both express and implied warranties of merchantability and warrants that the Fleet Fuels shall meet the specifications prescribed herein under Section 2 of Article I and other pertinent sections. Claims against the Contractor on account of quality and contaminations (defects), loss or damage to product shall be given in writing by GWA within thirty days (30) from date of purchase (delivery) of fuels as specified herein. If the fuel oil fails to meet the required specifications, Contractor shall be liable for any direct damages including, but not limited to, compensation and such damages shall not affect other remedies provided for in the Contract.

SECTION 2

SECTION 2.01: PRODUCT AND QUALITY

The typical characteristics of the Fleet Fuels to be supplied under this contract shall be as follows:

A. DIESEL FUEL Oil No.2 A

Typical Characteristics:

Property	ASTM Test Method ^B	Alternate Method ASTM	Unit of Measure	Limits
Flash Point	D93		ဇင	52 Min

Water & Sediment	D2709		1 0/1	1 0 05	
Distillation Temp, °C	D2709		% vol	0.05	
90%, recovered	D86	1		282	
Kinematic Viscosity		 	% vol	360	
Kinematic Viscosity	D-445	1	mm ² at 40°C	1.9	
Ash		-		4.1	Max
	D482	<u> </u>	% mass	0.01	Max
Sulfur	D5453	D7039-13	ppm (μg/g)	15	Max
Copper Strip Corrosion Rating		1	1	1	
(3hrs min at 50°C)	D130			No.1	Max
Cetane Index	D 613	D976-80		46	Min
		D 4737	ĺ	İ	
Aromaticity	D1319		% vol	35	Max
Carbon Residue	D524	D4530			
on 10% distillation residue		D6371	% mass	0.20	Max
Lubricity, HFRR @ 60°C	D6079		Micron	460	Max
Conductivity	D2624	D4308	pS/m	25	Min
Density @ 15°C	D1298	D4052	Kg/m³	820	Min
		- 1332	6	850	Max
Gravity, API @ 60°F	D1295	D4052		35	Min
				41	Max
Color	D1500		ASTM	2.0	Max
Strong Acid No.	D974		mg KOH/g	N	
Total Acid No.	D974		mg KOH/g	0.5	Max
Stability (Oxidation), 16Hrs	D2274		mg/L	25	Max
Appearance @ ambient temp	Visual		mg/L	Rep	_
Guaranteed Heating Value	D240		MMBTU/bbl	5.70	Min
(HHV)	2240	j	1411470-1 (1/00)	5.70	TAYIII
		1			

A 1. Follows the minimum requirements for Ultra-Low Sulfur Diesel (ULSD) Fuel Oil listed under ASTM 975-10.

B. AUTOMOTIVE GASOLINE, REGULAR UNLEADED

Typical characteristics:

Property	ASTM Test Method	Alternate Method	Unit of Measure	Limits
Appearance @ Ambient Temp.			VISUAL	Clear & Bright
Color			ASTM	Report
Gravity, API @ 60 deg. F.	•	D-1298		Report
DISTILLATION IBP, °C 10% Evaporation 20% Evaporation 50% Evaporation		D-86		Report 70 Max Report 115 Max

^{2.} Guam Public Law 30-184 mandates compliance to ULSD standards for Diesel Fuel Oil No.2

90% Evaporation FBP				180 Max
Residue			1	215 Max
Reid Vapor Pressure @100°F,	D-5191	D-6378	psi	2 Max 9 Max
SULFUR Content	D-2622	D-5453	Wt. ppm	300 Max.
Existent Gum	D-381		mg/100 ml	4 Max
Doctor Test	D-4952	IP30		Negative
Induction Period @100°C	D-525		minutes	480 Min
Research Octane No. (RON)	D-2885	D- 2699MOD		91 Min
Motor Octane No. (MON)	D-2700MOD			Report
Anti-Knock Index (RON +MON)/2			Calculated	87 Min
Copper Corrosion @3 hrs @ 50°C	D-130			1 Max
Lead Content	D-3237	IP-224	g Pb/ USG	NIL
Phosphorus	D-3231		g/USG	0.005 Max
Benzene	UOP 744MOD	JM63	Wt%	Report
Ethylbenzene	UOP 744 MOD	JM63	Wt%	Report
Toluene	UOP 744 MOD	JM63	Wt%	Report
Total Aromatics	UOP 744 MOD	JM63	Wt%	Report
Xylene	UOP 744 MOD	JM63	Wt%	Report

Note: GWA may require the supplier to conduct additional tests as may be necessary.

SECTION 2.02: QUANTITY AND QUALITY ASSURANCE

The Contractor shall ensure that any of the designated service stations have metered quantity at the pump, the metering device has to be calibrated or had been calibrated at a frequency of six (6) months minimum and to be affected with the presentation of calibration certificate as performed by the third-party certifying company. GWA will require submittals by the successful awardee.

(a) FLEET FUELS ON-STOCK INVENTORY.

The Contractor is required to maintain at its own storage facility, a minimum inventory of 20-days' supply requirement, approximately 20,000 gallons for each fuel grade.

(b) FLEET'S FUELS QUALITY TESTING.

The Fleet fuel delivered to GWA shall have the physical and chemical characteristics as described in Section 2.01.

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

Quality determination shall be performed and certified by an independent third-party laboratory facility acceptable to GWA. Certificate of Quality (COQ) shall be representative of the product in the Contractor's storage facility in Guam.

The Contractor shall provide, at no cost to GWA, laboratory services and quality certification of the Fleet Fuels.

SECTION 3

SECTION 3.01: SECURITY.

For security of supply, Contractor reserves the right to supply the Fleet Fuels meeting GWA specifications from any lawful source. In the event that supplies are taken from such other places, then the price as invoiced to GWA will remain the same as established in Section 1.03.

SECTION 3.02: GOVERNMENT LAWS AND REGULATIONS

This Contract as executed shall be governed and construed in accordance with the laws, statutes, and regulations of the Territory of Guam. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition contained in the Uniform Commercial Code of Guam will control, unless otherwise specified.

The parties expressly submit to the jurisdiction of the Superior Court of the Territory of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. The Contractor agrees to accept the jurisdiction of the Superior Court of the Territory of Guam for the resolution of any claims. The Contractor waives all rights against GWA to claim consequential, special or punitive damages.

SECTION 3.03: TAXES and OTHER GOVERNMENT CHARGES

All forms of taxes, fees, charges, duty, or other form of amount equivalent thereto, now or hereafter imposed, levied, or assessed by the United States Government, the Government of Guam, or any instrumentality or agency thereof, in connection with and as a result of the sale of such goods herein provided for, if collectible or payable, shall be the responsibility of the Contractor.

SECTION 3.04: SPECIFICATIONS.

Should GWA wish to alter any of the specifications set out under Section 2.01 of Article I, terms of delivery, for good cause, it shall give written notice to Contractor within thirty (30) days. If such changes cause an increase or decrease in Contractor's cost of performance of Contract, an equitable adjustment shall be made and the Contract modified in writing accordingly. Any claim by Contractor for adjustment under this section must be asserted in writing within thirty (30) days from the date of receipt by Contractor of the notification of changed specifications. Contractor and GWA shall, in good faith, negotiate an equitable adjustment pursuant to the change in specifications. If Contractor and GWA fail to agree on the adjustment to be made within thirty (30) days after Contractor receives notice of altered specifications, or if Contractor is unwilling to meet the altered specifications, the parties agree to subject themselves to the terms of the "Disputes" clause herein. However, nothing in this clause shall excuse the Contractor from proceeding with the Contract specifications as changed.

SECTION 3.05: PERMITS AND RESPONSIBILITIES.

The Contractor shall, without additional expense to GWA, 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 by Contractor.

SECTION 3.06: FORCE MAJEURE.

No failure or omission 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 if the same shall be cause by or arise out of:

- (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) <u>Confiscation</u>. Expropriation, requisition, confiscation or nationalization;
- (d) <u>Rationing</u>. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;
- (e) <u>Regulations</u>. 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) <u>Loss for Tankers</u>. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) <u>Strikes</u>. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (i) <u>Explosions</u>. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- 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;

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.

SECTION 3.07: NOTICE TO OTHER PARTY.

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.06, 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 3.08: PAYMENT REQUIRED.

Notwithstanding the provisions of Section 3.06, GWA shall not be relieved of any obligation to make payments for any Fleet Fuels delivered to/purchased by GWA, however, during the force majeure condition the obligation shall be suspended, except for all fuels purchased prior to the force majeure condition.

SECTION 3.09: ALTERNATE SUPPLY.

In the event Contractor is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor or failure to meet GWA's requirement, GWA may at its sole discretion seek an alternative source for the fleet's fuels from other petroleum suppliers. If the cost of fuels during such period exceeds the Contract price as provided in Section 1.03, the Contractor shall be liable to GWA for the difference in cost and GWA must be reimbursed for said amount proven by GWA to be the difference in cost and based upon proven use by GWA official vehicles during this period.

SECTION 3.10: RESUMPTION OF PERFORMANCE.

If Contractor is prevented from delivering or GWA is prevented from receiving all or any of the Fleet Fuels, to be purchased under the Contract for the reasons which fall within the

provisions of Section 3.06, then the party so prevented shall, as to the remainder of the Fleet Fuels not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.06, 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 3.11: DISPUTES.

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

SECTION 3.12: INDEMNITY.

Contractor agrees to hold the Consolidated Commission on Utilities, its employees, GWA, and GWA's employees 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 or for other performance required under this Contract.

SECTION 3.13: INSURANCE.

A. INSTRUCTIONS:

Contractor shall not commence work under this contract until he has obtained all insurance required under this section and such insurance has been approved by GWA, nor shall the Contractor allow any subcontractor to commence work on his subcontract until all similar insurance required of the subcontractor has been so obtained and approved. All policies shall name GWA as an additional insured and contain a waiver of subrogation in favor of GWA.

B. WORKMEN'S STATUTORY COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY INSURANCE:

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

C. PUBLIC LIABILITY INSURANCE:

- 1. The Contractor shall maintain, during the life of this Contract, all necessary insurance as needed to protect Contractor against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from operations under this Contract whether such operations be by himself or by any Subcontractor or anyone directly or indirectly employed by either of them. The minimum acceptable limits of liability to be provided Liability Insurance shall be as follows:
 - (a) Bodily Injury Limits: \$500,000 each person, each occurrence.
 - (b) Property Damage Limits: \$2,000,000 maximum each occurrence.
- 2. The Public Liability Insurance required by the preceding Subparagraph 1 shall include the following extensions of coverage:
 - (a) The coverage shall be provided under a Comprehensive General Liability form of policy or similar thereto.
 - (b) The property damage coverage shall include a Broad Form Property Damage Endorsement.
 - (c) Contractual Liability coverage shall be included.
 - (d) Protective Liability coverage shall be included to protect the Contractor against claims arising out of operations performed by his subcontractors.
 - (e) Products Liability and/or Completed Operations coverage shall be included.

D. AUTOMOBILE LIABILITY INSURANCE:

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

limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

(a) Bodily Injury Limits:

\$300,000 Each Person and

\$500,000 Each Occurrence

(b) Property Damage Limits:

\$300,000 Each Occurrence

E. CERTIFICATE OF INSURANCE:

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

F. SUBCONTRACTOR'S INSURANCE:

The Contractor shall require each of his subcontractors to take out and maintain during the life of his Subcontract, the same insurance coverage required of the Contractor under Paragraphs B., C., and D. above, including the extensions of coverage required under Paragraph C., Subparagraph 2, above. Each subcontractor shall furnish to the Contractor two (2) copies of the Certificates of Insurance and such certificates shall contain the same information required in Paragraph. above. The Contractor shall furnish one (1) copy of the certificates to GWA.

G. INSURANCE COMPANY AND AGENT:

All insurance policies herein required of the Contractor shall be written by a company duly authorized and licensed to sell the policy types required hereunder on Guam where supply under this Contract is being performed and be executed by an agent thereof duly licensed as an agent in said State or Territory.

H. INDEMNITY:

The Contractor shall indemnify and hold GWA free and harmless from all injuries and damages to persons or properties as a result of and relative to Fleet Fuel deliveries, including the cost of enforcement of the indemnity, actually and proximately caused by the Contractor or its agents and employees in the performance of the terms of the Contract.

I. OIL SPILL RESPONSIBILITIES:

The Contractor shall be responsible for any and all oil spills caused by or as a result of the performance of fuel deliveries. The Contractor shall recover or remove, or cleanup as appropriate, any fuels spilled by the Contractor, its agents or assigns upon the performance of this Contract.

SECTION 3.14: RESTRICTION AGAINST SEX OFFENDERS.

The Contractor shall fill out a Certification of Non-Employment of Convicted Sex Offenders that is attached to this Bid.

SECTION 4

SECTION 4.01: FAILURE TO SUPPLY.

Should Contractor fail to perform any of the terms, provisions or conditions of this Contract, the Contractor shall be in default. In this event, GWA will provide a written notice to the Contractor of such default, and provide the Contractor an opportunity to cure the default within thirty (30) calendar days after the notice of default.

During this period, GWA, at its discretion and in accordance with whatever action, reserves the right to secure similar Fleet Fuels from other sources; in such event, the Contractor shall be responsible for any costs, expenses, fees, and monetary amounts of any nature whatsoever, including but not limited to handling fees, administrative, labor, and operations costs, and all other amounts associated with or related to the securing of such Fleet Fuels by the Authority. Should the Contractor fail to cure such default within thirty (30) calendar days after the notice of default thereof, GWA may terminate the Contract in whole or in part. In the event that GWA terminates the Contract by default, then the provisions of the performance bond shall be in effect.

SECTION 4.02: 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 after notice of default, Contractor may, at its option, do either of the following:

- (a) terminate the Contract effective thirty (30) days after receipt by GWA of written notice if not first cured; or
- (b) continue to supply Fleet Fuels and bring suit in the Superior Court of Guam for amounts past due and as they become due for any amount more than sixty (60) days past due.

SECTION 4.03: 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, GWA may at its sole discretion terminate this Contract upon 30 days written notice.

SECTION 4.04: DEFAULT.

(a) Default.

In addition to default under the provision of Section 4.01, 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 Fleet Fuel supply or commits any other substantial breach of this contract, GWA 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, GWA may terminate the contract in whole or such part or parts 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, GWA may procure the Fleet Fuels supply from another source whenever it deems appropriate.

(b) Compensation.

GWA shall pay for Fleet Fuels delivered to GWA provided such fuel is received at the time of receipt of GWA's notice of termination for default.

(c) Additional Rights and Remedies.

The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this Contract.

SECTION 4.05: TERMINATION FOR CONVENIENCE.

(a) Termination.

The delivery of Fleets Fuels supply under this Contract may be terminated by GWA in accordance with this clause in whole, or from time to time in part, whenever GWA shall determine that such termination is in the best interest of GWA, or whenever GWA because of technological developments ceases to use the said Fleet Fuels, as described in the specifications contained in this Contract and the bid.

Any such termination shall be affected by delivery to the Contractor of a written Notice of Termination specifying the extent to which the Contract is terminated, and the Contract shall be terminated effective sixty (60) days after receipt of notice by Contractor.

(b) Contractor's Obligations.

The Contractor shall incur no further obligations in connection with the terminated fuel supply delivery and on the date set in the Notice of Termination the Contractor will stop delivery of fuels to the extent specified.

The Contractor shall also terminate outstanding orders and contracts, if any, as they relate to the portion/s or part of the contract of the terminated Contract.

(c) Compensation.

- (1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience. If the Contractor fails to file a termination claim within one (1) year from effective date of termination, GWA may pay the Contractor, if at all, an amount set in accordance with subparagraph (3) of this paragraph.
- (2) GWA 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 2 G.A.R. § 3118 (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 GWA, the proceeds of any sales of supplies and manufacturing materials under the Guam Uniform Commercial Code, and the Contract price of the Fleet Fuel not terminated.
- (3) Absent complete agreement under subparagraph (1) of this paragraph, GWA may pay the Contractor the following amounts, provided payments agreed to under subparagraph (2) shall not duplicate payments under this subparagraph:
- Fleet Fuels Contract prices for supplies or services accepted under the contract by GWA;
- (ii) Costs incurred in preparing to perform and performing the terminated portion of the delivery of Fleet Fuels 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 fuels 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 hereunder, 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 to 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 clause.

SECTION 4.06: REMEDIES CUMULATIVE.

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 5

SECTION 5.01: COVENANT AGAINST CONTINGENT 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, except 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, GWA 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 5.02: 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 first class of priority and addressed to the party at the address set forth in this section, and deposited in the United States mail. 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:

GWA:

General Manager

Guam Waterworks Authority

Post Office Box 3010 Hagatna, Guam 96932 Facsimile: (671) 648-3290

CONTRACTOR:		 	
	Facsimile:	 	

SECTION 5.03: INTEREST OF OTHER PARTIES.

Contractor warrants that no member of the Consolidated Commission on Utilities, GWA, and no other officer, employee, or agent of GWA 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 5.04: 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 GWA. 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 GWA's written consent which may be given or refused at GWA's absolute discretion.

SECTION 5.05: TIME.

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

SECTION 5.06: 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 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, 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.

GWA reserves the right to add (via Change Order or Contract Amendment) any and all fleet vehicles and heavy equipment from the Guam Power Authority ("GPA") as vehicles that will be eligible to receive fuel under this bid. If such an event occurs, GWA will notify the Contractor of the persons and vehicles that are eligible to receive fuel under this bid on behalf of GPA. Any fuel used by GPA will be billed directly to GPA under the same terms and conditions in this Bid and the Contract. GWA, on behalf of, and in cooperation with GPA, reserves the right to renegotiate a reduction in price due to volumetric changes in the fuel to be consumed by GWA and GPA jointly.

SECTION 5.07: DESCRIPTIVE HEADINGS.

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

SECTION 5.08: 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.

Judgment upon any award rendered by the Superior Court of the Territory of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. The Contractor waives all rights against GWA to claim consequential, special or punitive damages.

SECTION 5.09: DEFINITIONS.

- (a) "Barrel" shall mean 42 U.S. gallons.
- (b) "Day" and "Month" shall mean a calendar day and month respectively.
- (c) "Fleet Fuels" shall mean Diesel Fuel Oil No. 2 or Automotive Gasoline, Regular Unleaded, consistent with the specifications set forth in the bid and this contract.
- (d) "Gallon" or "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.

- (e) "Receiving facility" means GWA or at the vendor's stations (depending on use).
- (f) "Fleet" or "Transportation fleet" shall mean the vehicles or equipment authorized by GWA.
- (g) "GWA" or "Authority" shall mean the Guam Waterworks Authority.
- (h) "Ton" shall mean a metric ton of 2204.62 English pounds.
- (i) "\$" refers to United States Dollars.

SECTION 5.10: 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 GWA, and no provisions contained in the contract nor any acts of the parties shall be deemed to create any relationship between GWA and Contractor, other than the relationship of buyer and seller.

SECTION 5.11: 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 5.12: SUCCESSORS IN INTEREST, SUBCONTRACTING AND ASSIGNMENT.

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 and any approved subcontractor. This agreement, nor any performance thereunder may be assigned nor sublet by Contractor to any other party without the express written consent of GWA.

SECTION 5.13: 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 full 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 parts or portions which may, for any reason, be hereafter declared invalid.

SECTION 5.14: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the GWA 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 6

SECTION 6.01: BINDING EFFECT.

This Contract is binding upon the Contractor only if Contractor has been awarded the Contract in response to the GWA-<u>IFB NO. 2022-01</u>. This procurement is subject to the approval of the Consolidated Commission on Utilities ("CCU"), and may also be subject to Public Utility Commission ("PUC") approval, so shall only become binding upon all required approvals required as evidenced by the signatories below.

IN WITNESS WHEREOF, the parties have entered into this Contract on the dates indicated by their respective names.

Contractor:	Guam Waterworks Authority:
Ву:	By: Miguel C. Bordallo, P.E. General Manager
Date:	Date:
Certified Funds Available:	Approved as to Form:
Ву:	Ву:

Certifying Officer Guam Waterworks Authority

Theresa G. Rojas, Staff Attorney, GWA

Date	<u> </u>	· · · · · · · · · · · · · · · · · · ·		Date:		
	m Business I		Certificate of Aut	horization No.:	·	
	ior No.:					
COF	PORATE (CERTIFIC	CATION AS TO	AUTHORIZAT	TON TO BIN	D
I, the	Secretary	of th	e corporation	named as	Contractor	certify that I am
			who signe	d this contract o	n behalf of the	Contractor, was
			body, and is with conditions of this		s corporate po	wers to bind said
				(CORPORA)	ΓE SEAL)	
		****	** END OF C	ONTRACT *	****	

BID AND PERFORMANCE BOND FOR GOODS AND SERVICES AS REQUIRED UNDER 5 G.C.A. § 5212

KNOW ALL MEN BY THESE PRESENTS, that (Name of Contractor) 28 Principal. herein after called Principal the and (Name of Surety) as duly admitted insurer under the laws of the Territory of Guam, as Surety, hereafter called the Surety, are held and firmly bound unto the Guam Waterworks Authority for the sum), for payment of which sum will and truly to be made, the said Principal and the said Surety bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally firmly by these presents: WHEREAS, the Principal has submitted a bid for and is anticipated to enter into a contract in the amount specified below.

NOW, THEREFORE, if the Guam Waterworks Authority shall accept the bid and the Principal shall not withdraw said bid within sixty (120) calendar days after the opening of bids, and shall within twenty-one (21) calendar days after the prescribed forms are presented to him for signature, enter into a Contract with the Guam Waterworks Authority in accordance with the terms of such bid. This bond shall also be held by the Guam Waterworks Authority to secure the faithful performance of such Contract and for the prompt payment of labor, goods, services and materials furnished in the prosecution thereof. In the event of the failure of the Principal to enter into such Contract, or if the Principals (Contractor) fails to perform in accordance with the requirements set out under the Bid or any other written instrument requirement performance thereunder, the Surety, on behalf of the Principals shall pay to the Guam Waterworks Authority the differences not to exceed the penalty hereof between the amounts specified in said bid and such larger amount for which the Guam Waterworks Authority may in good faith contract with another party to perform work covered by said bid or an appropriate liquidated amount as specified in the Invitation for Bids then this obligation shall be null and void, otherwise to remain in full force and effect.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION is such that, if the contractor shall promptly and faithfully perform said Contract, and shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

A. The Surety hereby waives notice of any alteration or extension of the time made by the

Authority provided the same is within the scope of the Contract or any modification thereto.

- B. Whenever the contractor shall be and is declared in default by the Authority to be in default under the Contract, the Authority having performed its obligations hereunder, the Surety may promptly remedy the default or shall promptly:
 - 1. Complete the Contract in accordance with its terms and conditions; or
 - 2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Authority and the Surety of the lowest responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts or completion arranged under this paragraph) sufficient funds to pay the cost of completion, less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price," as used in this paragraph shall mean the total amount payable by the Authority to Contractor under the Contract and any amendments thereto, less the amount properly paid by the Authority to Contractor. No right of action shall accrue on this bond to or for use of any person or corporation other than the Authority or successors of the Authority.
- C. A claimant is defined as one having a direct contract with the Contractor or with a subcontractor of the Contractor for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
- D. The above named Contractor and Surety hereby jointly and severally agree with the Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date of which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment to final judgment for such sum or sums as may be justly due the claimant, and have execution thereon. The Authority shall not be liable for the payment of any costs or expenses of any such suit.
- E. No suit or action shall be commenced hereunder by any claimant:
- 1. Unless claimant, other than one having a direct contract with the contractor, shall have given written notice to any two (2) of the following:

The Contractor, the Authority, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom

the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Contractor at any place the principal maintains an office or conducts its business.

- 2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.
- 3. Other than in a court of competent jurisdiction in and for the Territory of Guam.
- F. The amount of the bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder.

SIGNED AND SEALED THIS	day of	, 202, A.D.
IN THE PRESENCE OF: (Note: If the Principals Are Partners, each	ch must execute the Bond)	
(WITNESS)	(CONTRACTOR)	(SEAL)
(TITLE)	(TITLE)	
(MAJOR OFFICER OF SURETY)	(MAJOR OFFICE	ER OF SURETY)
(TITLE)	(TITLE)	
	(RESIDENT GEN	IERAL AGENT)

SPECIAL PROVISON FOR OWNERSHIP DISCLOSURE AFFIDAVIT

All Bidders/Offerors are required to submit a current affidavit as required below. Failure to do so will mean disqualification and rejection of the Bid/RFP.

5 GCA §5233 (Title 5, Section 5233) states:

Disclosure of Ownership, Financial, and Conflicts of Interest

(a) Purpose. The disclosure required by this Section are intended to reveal information bearing on the responsibility of a bidder, and can be obtained by an inquiry regarding responsibility prior to award.

(b) Definitions.

As used herein, the term "person" shall be interpreted liberally to include the definition found in 1 GCA § 715, and in § 5030(n) of this Chapter, and includes a natural person as well as every entity of whatever form or composition (an "artificial person") recognized under the laws of Guam other than a natural person, who is a prospective contractor under a bid, offer, proposal, or other response to a solicitation, or is a contractor under a contract with the government of Guam, and subject to the provisions of this Chapter.

(c) Public Disclosure of Ownership.

- (1) The ownership interests to be disclosed under this Section include the interests of a natural or artificial person who owns all or any part of a prospective contractor, bidder, or offeror, whether as proprietor, a partner, limited or otherwise, a shareholder of any class, in which case the percentage ownership interest test shall be based on each class, a member of an association or company, limited or otherwise, and any person owning a beneficial legal interest in any trust, and any other person having the power to control the performance of the contract or the prospective contractor.
- (2) Prior to award, every person who is a prospective contractor, bidder, or offeror of a contract to be acquired under any method of source selection authorized by this Chapter shall submit a Disclosure Statement, executed as an affidavit under oath, disclosing the name of each person who currently or has owned an ownership interest in the prospective contractor, bidder, or offeror greater than ten percent (10%) at any time during the twelve (12) month period immediately preceding the date of the solicitation (the "relevant disclosure period"). If a prospective contractor, bidder, or offeror is an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such artificial person (a "second tier owner") greater than twentyfive percent (25%) at any time during the relevant disclosure period. If any such second tier owner is also an artificial person, the Disclosure Statement shall disclose the name of each person who has owned an ownership interest in such second tier owner (a "third tier owner") of forty-nine percent (49%) or more during the relevant disclosure period. If the name of no natural person has been identified as an owner, or a second or third tier owner of the prospective contractor, bidder, or offeror, the Disclosure Statement shall identify the name, position, address, and contact information of the natural person having the authority and responsibility for the performance of the prospective contract, and the name

of any natural person who has the authority and power to remove and replace the designated responsible person or otherwise control the performance of the prospective contract.

- (d) Disclosure of Financial Interest. A prospective contractor shall execute an affidavit disclosing the name of any person who has received or is entitled to receive a commission, gratuity, contingent fee or other compensation to solicit, secure, or assist in obtaining business related to the solicitation by means of a Disclosure Statement, executed as an affidavit under oath, disclosing such interest and shall also contain the amounts of any such commission, gratuity, contingent fee or other compensation.
- (e) Disclosure of Conflict of Interest. A prospective contractor shall disclose the name of any person who directly or indirectly participates in any solicitation if such person is also an employee of the government of Guam, or of the government of the United States if federal funds are used in payment of the contract.
- (f) Every disclosure of an ownership or financial interest of any person required to be identified by this Section shall name the person required to be disclosed and the street address of their principal place of business. All information disclosed or meant to be disclosed under this Section is public procurement data and shall be kept as part of the public record of each procurement.
- (g) Continuing Duty of Disclosure. Notwithstanding any other provision of this Chapter, the duty to disclose the information required under this Section shall be, upon award a continuing duty of a contractor of every contract subject to this Chapter, and all such information shall become part of the procurement record required by § 5249 of this Chapter. Throughout the term of a contract subject to the terms of this Chapter, the contractor shall promptly make any disclosures not made previously and update changes in the identities or other required information, interests, or conflicts of the persons required to be disclosed herein. Failure to comply with this Section shall constitute a material breach of contract."

Section 2. Severability. If any provision of this Act or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

- 1. If the affidavit is a copy, indicate the BID/RFP number and where it is filed.
- 2. Affidavits must be signed within 60 days of the date the bids or proposals are due.

OWNERSHIP & INTEREST DISCLOSURE AFFIDAVIT

TER	RITORY OF GUAI	[)
)
HAG	ATNA, GUAM)
I, unde	ersigned,	, being first duly sworn, depos
	(partne	r or officer of the company, etc.)
I.	contractor, bidder, o	h person who owns or has owned an ownership interest in the prospective offeror greater than ten (10%) at any time during the twelve (12) month preceding the date of this solicitation are as follows:
	<u>Name</u>	Percentage of Street Address (Principal Place of Business) Shares Held
		Total percentage of shares:
•	or has owned an inte	isted Section 1 who are artificial persons, the name of each person who ownest in such artificial person (a "second-tier owner") greater than twenty-five time during the relevant disclosure period are as follows:
	Name	Percentage of Street Address (Principal Place of Business) Shares Held
		Total percentage of shares:
	owned an ownership	sted Section 2 who are artificial persons, the name of each person who has nterest in such second-tier owner (a "third-tier owner") of forty-nine percent the relevant disclosure period are as follows:
	Name	Percentage of Street Address (Principal Place of Business) Shares Held
		Total percentage of shares:

Name & Position	Street Address (Principal Place of Business	Contact Infor
The natural person having the a	authority and power to remove and replace t	he designated
	e control the performance of the prospective	
Name & Position	Street Address (Principal Place of Business)	Contact Infor
Persons who have received or a procuring or assisting in obtain submitted are as follows:	are entitled a commission, gratuity or other of the bid/RFP for which	h this Affidavit
	Address	Amount of Commission, Gratuity, or of Compensation
Persons who directly or indirect employees (or government of the contract):	tly participated in this solicitation, if govern ne United States employees, if federal funds	ment of Guam are used in pay
		Contact Inform
Name & Position	Street Address (Principal Place of Business	Contact Infon
Name & Position Further, affiant sayeth naught.	Street Address (Principal Place of Business	Contact Inform
Further, affiant sayeth naught.	Signature of individual if bidder/of Proprietorship; Partner, if the bidder/o corporation.	feror is a sole
Further, affiant sayeth naught. Date:	Signature of individual if bidder/of Proprietorship; Partner, if the bidder/of	feror is a sole er/offeror is a fferor is a
Further, affiant sayeth naught. Date:	Signature of individual if bidder/of Proprietorship; Partner, if the bidder/of Partnership Officer, if the bidder/o corporation.	feror is a sole er/offeror is a fferor is a

NON-COLLUSION AFFIDAVIT

Guaili) \		
Tamuning) ss:)		
I,(Name of Decla	rant)	first bei	ng duly sworn, depose and say:
1. That I am the	(0)	of _	(Name of Company or Person Bidding/RFP
	(Title)		(Name of Company or Person Bidding/RFP
collusive or shat directly or indire submitting a pro or collusion, or o or any other bidd that of any bidde	m, that said bidder/ ectly, with any bidd posal and has not in communication or of der, or to secure any er, or to secure any or any person interests its in said proposal	offeror her or per on any ma conferency overher advantage sted in the or bid are	d, that such proposal or bid is genuine and not as not colluded, conspired, connived or agreed, son, to put in a sham or to refrain from bidding cunner, directly or indirectly, sought by agreement ce, with any person, to fix the bid price of affiant ad, project or cost element of said bid price, or of the against the GUAM WATERWORKS are proposed contract; and the true. G.A.R. § 3126(b).
So sayeth			
-	(Declaran	t)	
instrument and a	knowledged to me	that he	before me a Notary Public in and for Guam, , known to me to be the authorized , whose name is subscribed to the foregoing executed the same as his free and voluntary act , for the uses and purposes therein set
IN WITNESS W.	HEREOF, I have h ı.	ereunto s	set my hand and affixed my official seal the date
(Seal)			
Notary Public			

NO GRATUITIES OR KICKBACKS AFFIDAVIT

AFFIDAVIT				
(Offeror)				
TERRITORY OF GUAM)			
) ss:			
HAGATNA, GUAM)			
he	eing first duly sworn,	denoses and savs.		
As the duly authorized represe				
representatives, agents, subco		•	-	
any government of Guam	• •			•
gratuity or offer of employ				
graduity of offer of employ	ment in connection v	vidi Offotot 3 prop	osai.	
Signature of Individual if Pro	poser is a Sole Propri	etorship;		
Partner, if the Propos	ser is a Partnership;			
Officer, if the Propos	er is a Corporation			
SUBCRIBED AND SWORN	to before me this	day of	, 2021.	
	Notar	y Public	<u></u>	
	· · · · · · · · · · · · · · · · · · ·	for the Territory	of Guam	
		ommission Expire		

ETHICAL STANDARDS AFFIDAVIT

(Proposer)	
TERRITORY OF GUAM)
) ss:
HAGATNA, GUAM)
, bei	ing first duly sworn, deposes and says:
That Offeror making the representatives, agents, su influenced any government in 5 GCA Chapter 5 Articlagent, subcontractor, or en	ietor, a Partner or Officer of the Offeror) foregoing Proposal, that neither he or nor of the Offeror's officers becontractors, or employees of the Offeror have knowingly at of Guam employee to breach any of the ethical standards set forth le 11, and promises that neither he nor any officer, representative, apployee of Offeror will knowingly influence any Government of any ethical standard set for in 5 GCA Chapter 5 Article 11,
	Signature of Individual if Proposer is a Sole Proprietorship; Partner, if the Proposer is a Partnership;
	Officer, if the Proposer is a Corporation
SUBCRIBED AND SWOR	N to before me thisday of, 202
	Notary Public
	In and for the Territory of Guam
	My Commission Expires:

CONTINGENT FEE AFFIDAVIT

GUAM/State of			
Municipality/City of)ss:)		
I, the undersigned,says:	(name] beit	ng first duly sworn,	deposes and
1. I am the Offeror] ("offeror").	[title] of	,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	[name of
2. As part of offeror's bid or protestained any person or agency of secure this contract.			
3. As part of offeror's bid or protestained A person to solicit or sagreement or understanding for except for retention of bona fideagencies for the purpose of secons	secure a contract with a commission, perce e employees or bona	the government of entage, brokerage, o	f Guam upon an or contingent fee,
4. All statements in this affidav of the undersigned.	it and in the proposal	l are true to the bes	t of my acknowledge
5. These statements are made p	ursuant to 2 GAR Di	vision 4 § 11108(h).
5. I make these statements on b the Offeror's office, representat			
Further, affidavit sayeth naught	t.		
Date:	m:-		
	Title:	·	
Subscribe and sworn to before i	me this	day of	, 2021.
		Notary Public My commission	in and for Guam

GOOD STANDING AFFIDAVIT

Guam)	
Tamuning)ss:)	
	I,(Name of Declarant)	first being duly sworn, depose and say:
1. That I am	ı the c	of
2. That I rep laws of Guartime award is 3. I make the the Offeror's	present and warrant that Offeror in or will be duly registered and is made under IFB ese statements on behalf of mys	elf as a representative of Offeror, and on behalf of s, subcontractors, and employees.
	(Declarant)	
representative	ppearede of	, before me a Notary Public in and for Guam,, known to me to be the authorized, whose name is subscribed to the foregoing executed the same as his free and voluntary act
and deed on b	pehalf of	for the uses and purposes therein set
IN WI	ITNESS WHEREOF, I have he bove written.	reunto set my hand and affixed my official seal
(Seal)		
Notary Public	;	

WAGE AND BENEFIT DETERMINATION

Bid or RFP No.:	Name of Offeror:
I,	hereby certify under penalty of perjury as follows:
(2) That I have read and use will ensure that I and my s	[please select one: the offeror, a partner of the offeror, and the bid or proposal in the foregoing identified procurement; and the provisions of 5 GCA 5801 and 5802 below and that I subcontractors will comply with said provisions which read as
sole proprietorship, a parti service to the government person(s) whose purpose, the government of Guam, the Wage Determination f promulgated by the U.S.	on Established. Overnment of Guam enters into contractual arrangements with a mership or a corporation ("contractor") for the provision of a of Guam, and in such cases where the contractor employs a in whole or in part, is the direct delivery of service contracted by then the contractor shall pay such employee(s) in accordance with for Guam and the Northern Mariana Islands issued and Department of Labor for such labor as is employed in the direct grables to the government of Guam.
contract is awarded to a cowages, which shall be particularly contain a renewal clause, stipulations contained in this Article, so that the Woon a date most recent to the contract of the con	most recently issued by the U.S. Department of Labor at the time a contractor by the government of Guam shall be used to determine id to employees pursuant to this Article. Should any contract then at the time of renewal adjustments, there shall be made that contract for applying the Wage Determination, as required by age Determination promulgated by the U.S. Department of Labor the renewal date shall apply.
Article applies shall also employees covered by the Wage Determination issu contain provisions guarant	Determination detailed in this Article, any contract to which this contain provisions mandating health and similar benefits for his Article, such benefits having a minimum value as detailed in the ned and promulgated by the U.S. Department of Labor, and shall inteeing a minimum of ten (10) paid holidays per annum per
performance and through (4) That I have attach Guam issued by the U.S.	nd its subcontractors are now, or will be prior to beginning out the contract term, in full compliance with 5 GCA 5801 and 5802. ed the most recent wage and benefit determinations applicable to Department of Labor and that I will ensure all of my employees and contractors will be provided a minimum often (10) paid holidays per
	Signature

CERTIFICATION OF NON-EMPLOYMENT OF CONVICTED SEXUAL OFFENDERS

Pursuant to Guam Public Law 28-24, as amended by Guam Public Law 28-98, if a contract for services is awarded to the bidder or offeror, then the service provider must warrant that no person in its employment who has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 of the Guam Code Annotated or of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated, or who has been convicted in any other jurisdiction of an offense with the same elements as heretofore defined, or who is listed on the Sex Offender Registry, shall provide services on behalf of the service provider while on government of Guam property, with the exception of public highways. If any employee of a service provider is providing services on government property and is convicted subsequent to an award of a contract, then the service provider warrants that it will notify the Government of the conviction within twenty-four hours of the conviction, and will immediately remove such convicted person from providing services on government property. If the service provider is found to be in violation of any of the provisions of this paragraph, then the Government will give notice to the service provider to take corrective action. The service provider shall take corrective action within twenty-four hours of notice from the Government, and the service provider shall notify the Government when action has been taken. If the service provider fails to take corrective steps within twenty-four hours of notice from the Government, then the Government in its sole discretion may suspend temporarily any contract for services until corrective action has been taken.

I,(print name)	_ being a duly authorized representative acknowledge the			
-	ensure the Bid Proposal as submitted addresses the directive.			
	(Company Name)			
(Title)	-, ,			
(Signature)	(Date)			

DRAFTFORMAL CONTRACT

Bidders are notified they will be subject to these terms and conditions and as a condition of the submitting a bid, agree to the terms contained herein

TH	IS AGREEM		FORMAL , 2021							
AU and	THORITY ("	GWA"), who		ddres	s is 68	88 Rou	ite 15, M	langil	ao, Gua	am, 96913,
	ress is				sed to	condu	ct husine	999 ATI	Guam	and having
	ım business lic			-			ot ousilit	,05 OII	Count	arre mer me
WI	TNESSETH,	that	whereas,		GWA					purchase
							e of _			as
ider	tified in GWA	IFB/RFP No	o			•				
and SEC	W THEREFO in other docum CTION 1. <u>TH</u> provide all of the	nents associa	ted with the p	erfor	mance	hereu	nder, agr	ee as	follows	s:
the matthe respheres	prices specified erial, equipment Contract Docuonsible for all sunder (including the right to mutual agreemed by both particulars.	I in the bid. It, tools and soments as de taxes and some this amend this ent of both p	Bidder agrees services necess fined in Secti fees which m nited to, all en Agreement o	s to m sary t ion 3 nay b nploy r requ	aintair o perfo hereir e due ee, cor	n all tir orm an n. Bid relativ porate change	me all lic d comply dder also we to pay and gros order, bu	enses, with under under the under th	, labor, this Co erstands t or pe eipt taxe right is	insurance, ontract and s that it is erformance es). GWA s subject to
(a)	CONTRACT written notice the time, place by placing the the goods and always of the	to proceed and and manner ir signature h services here	nd to provide r provided in the rereto that the	the s the B y hav	ervices id Door e been	as specument place	ecified in ts (as am d on noti	the E ended ce tha	Bid Doo I). Bid at the pr	cuments in lder agrees rovision of
(b)	SUB-BIDDER Documents. I									

in any fashion whatsoever under this contract until such time as the express written

approval of GWA is obtained. The Contract Documents shall not be construed as creating any contractual relation between a sub-Bidder and the Guam Waterworks Authority.

SECTION 2. GWA AGREES:

1

To pay, and the Bidder agrees to accept in	n full payment for the performance of this Contract,
the amount of	(add other explanation if necessary)
GWA agrees to pay approved invoices or an invoice approved by GWA within sixty interest on such overdue payments.	n a net 30-day basis. In the event GWA does not pay (60) days, GWA agrees to pay Bidder six (6) percen

Any adjustment in contract price pursuant to clauses in this contract shall be made in one or more of the following ways:

- (a) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- (b) by unit prices specified in the contract or subsequently agreed upon;
- (c) by the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as specified in the contract or subsequently agreed upon;
- (d) in such other manner as the parties may mutually agree; or
- (e) in the absence of an agreement between the parties, by a unilateral determination by the GWA General Manager of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the GWA General Manager in accordance with generally accepted accounting principles and applicable sections under Chapter 7 (Cost Principles) of the Guam Procurement Regulations and subject to the provisions under Title 5, Chapter 5 of the Guam Code Annotated (Legal and Contractual Remedies).

For any request for a price adjustment, the Bidder shall submit cost or pricing data for any price adjustments subject to the provisions of 2 G.A.R. § 3118 of the Guam Procurement Regulations. Please note, fixed price bids of one year or less shall not be modified by GWA except in extreme circumstances (e.g., factory has burned down, massive increases in shipping costs, etc.)

SECTION 3. CONTRACT DOCUMENTS:

It is hereby mutually agreed that the following list of instruments, plans, specifications and 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:

- a. Invitation to Bid
- b. Instructions to Bidders
- c. Bid
- d. Form of Non-Collision Affidavit
- e. Bid Bond
- f. Certification of Bidders Regarding Equal Employment Opportunity
- g. Formal Contract (which shall control in the event of conflict between this and any other contract document)
- h. Performance Bond
- i. Payment Bond
- j. General Provisions
- k. Special Provisions
- 1. Technical Specifications
- m. Plans
- n. Addenda/Amendments
- o. Answers to Questions (if GWA determines they are applicable).

SECTION 4. LIQUIDATED DAMAGES:

The Bidder further agrees to pay to GWA the amounts stated in the bid for failing, neglecting or refusing to complete the work within the time herein specified and said sum shall be paid for each consecutive calendar day therefore that the Bidder shall be in default after the time stipulated in the Contract for completing the work, ready for use and/or operations. Sundays and legal holidays will be excluded in determining the number of days in default.

SECTION 5. COVENANT AGAINST CONTINGENT FEES:

The Bidder warrants that he has not employed any person to solicit or secure this contract upon any agreement for a commission, percentage, brokerage, or contingent fee. Breach of this warrant shall give GWA the right to terminate the contract, or at its direction, deduct from the contract price or consideration the amount of such commission, percentage, brokerage or contingent fee. This warranty shall not apply to commissions payable by Bidders upon contracts or sales secured or made through bona fide established commercial or selling agencies maintained by the Bidder for the purpose of securing business.

SECTION 6. OTHER CONTRACTS:

GWA may award other contracts for additional work, and the Bidder shall fully cooperate with such other Bidders and carefully fit his own work to that provided under other contracts as may be directed by the Contracting Officer. The Bidder shall not commit or permit any act which will interfere with the performance of work by any other Bidder.

SECTION 7. DISPUTES:

Except as otherwise specifically provided in this contract, all disputes concerning questions of fact arising under this contract shall be decided by the GWA General Manager whose decision shall be final and conclusive upon the parties thereto. In the meantime, the Bidder shall diligently proceed with the work as directed. However, the final decision of the GWA General Manager is appealable to the Guam Public Auditor as provided under 5 G.C.A. § 5427(e).

SECTION 8. DIFFERING SITE CONDITIONS.

The Bidder accepts the conditions at the work site as they eventually may be found to exist and warrants and represents that the contract can and will be performed under such conditions, and that all materials, equipment, labor and other facilities required because of any unforeseen conditions (physical or otherwise) shall be wholly at the Bidder's own cost and expense, anything in this contract to the contrary notwithstanding.

SECTION 9. CONTRACT BINDING:

It is agreed that this Contract and all the Covenants hereof shall insure to the benefit of and binding upon GWA and the Bidder respectively and his parties, successors, assignees and legal representative. Neither GWA nor the Bidder shall have the right to assign, transfer or sublet his interests or obligations hereunder without written consent of the other party.

It is hereby mutually agreed by and between the parties hereto that no mechanic, Bidder, sub bidder, material man or other person can or will contract for or in any other manner have or acquire any lien upon the binding or works covered by this contract, or the land upon which the same is situated.

SECTION 10. GWA NOT LIABLE:

- A. GWA, its officers, agents, employees and governing board assumes no liability for any accident or injury that may occur to the Bidder, Bidder's agents, employees, or to Bidder's property while on the job or otherwise in route to or from the job during any travel required by the terms of this agreement.
- 2. GWA, its officers, agents, employees and governing board shall not be liable to Bidder for any work performed by the Bidder prior to the written and signed approval of this Contract by the General Manager for GWA and the Bidder hereby expressly waives any and

all claims for service performed in expectation of this agreement prior to its signature of the General Manager.

SECTION 11. NOTICES:

All notices between the parties shall be in writing and shall be deemed served when personally delivered or when deposited in the mail, registered or certified, first-class postage prepaid, addressed as follows:

To: GUAM WATERWORKS AUTHORITY

Miguel C. Bordallo, P.E. GWA General Manager 688 Route 15, Mangilao, Guam, 96913

To: <u>BIDDER</u>

SECTION 12. TERMINATION:

Section 12.1 - Termination For Default:

- (1) <u>Default</u>. If the Bidder refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, GWA may notify the Bidder in writing of the delay or non-performance and if not cured in five (5) working days or any longer time specified in writing by the GWA, GWA may terminate the Bidder's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the GWA may procure similar services in a manner and upon terms deemed appropriate by the GWA. The Bidder shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar services.
- (2) <u>Bidder's Duties</u>. Notwithstanding termination of the contract and subject to any directions from the GWA, the Bidder shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Bidder in which GWA has an interest.

- (3) Compensation. Payment for completed services delivered and accepted by the government and GWA shall be at the contract price. GWA may withhold from amounts due the Bidder such sums as the GWA deems to be necessary to protect GWA against loss because of outstanding liens or claims of former lien holders and to reimburse the GWA for the excess costs incurred in procuring similar goods and services (including the provision of these goods and services by GWA personnel). In addition, in the event of a breach on the part of the Bidder, GWA shall be due liquidated damages in the amount of \$4,500 per day to compensate GWA for the costs incurred by attributable to Bidder's delay, breach or non-performance.
- Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of sub-Bidder(s) of Bidder, the Bidder shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Bidder to make progress in the prosecution of the work hereunder which endangers such performance) if the Bidder has notified the GWA within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform or to make progress due to such causes similar to those set forth above, the Bidder shall not be deemed to be in default, unless the services to be furnished by the Bidder (or sub-Bidder) were reasonably obtainable from other sources in sufficient time to permit the Bidder to meet the contract requirements. Failure of the Bidder (or sub-Bidder) to perform for reasons other than cited above shall constitute a default of the Bidder unless cured by Bidder with a reasonable time. Upon request of the Bidder, GWA shall ascertain the facts and extent of such failure, and, if GWA determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the Bidder's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the GWA and the government of Guam under the laws of Guam.
- (5) Erroneous Termination for Default. If, after notice of termination of the Bidder's right to proceed under the provisions of this clause, it is determined for any reason that the Bidder was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to Subsection C, below.
- (6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Section 12.2 - Termination For Convenience:

- (1) <u>Termination</u>. GWA may, when the interest of the government so requires, terminate this contract in whole or in part, for the convenience of the government or GWA (including the provision of services by any sub-Bidder of the Bidder). GWA shall give thirty (30) days advance written notice of the termination to the Bidder specifying the part of the contract terminated and when termination becomes effective.
- (2) <u>Bidder's Obligations</u>. The Bidder shall incur no further obligations in connection with the terminated work (except in the case of Sub Bidders where the Bidder is solely liable to GWA for their acts and/or non-performance or breach under this agreement) and on the date set in the notice of termination the Bidder will stop work to the extent specified. The Bidder shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Bidder shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GWA may direct the Bidder to assign the Bidder's right, title, and interest under terminated orders or subcontracts to GWA. The Bidder must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.
- (3) Right to Work Product. Upon termination of the contract for the convenience of the government or GWA or for any other reason, Bidder shall transfer title and deliver to GWA all documents and reports, plans, drawings, information and other material produced by Bidder or any of its sub-Bidders in connection with the performance of this contract. The Bidder shall protect and preserve property in its possession or in the possession of any of its sub-Bidders in which the GWA or the Government of Guam has an interest.

(4) Compensation.

- (a) The Bidder shall submit a termination claim specifying the amount due because of the termination for convenience together with cost or pricing data to the extent required by § 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Bidder fails to file a termination claim within one year from the effective date of termination, GWA may pay the Bidder, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.
- (b) GWA and the Bidder may agree to a settlement provided the Bidder has filed a termination claim supported by cost or pricing data to the extent required by § 3118 (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 the GWA and the contract price of the work not terminated.
- (c) Absent complete agreement under Subparagraph (2) of this Paragraph, GWA shall pay the Bidder the following amounts, provided payments agreed to under Subparagraph (2) shall not duplicate payments under this Subparagraph:

- (i) contract prices for services accepted under the contract;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Bidder 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 subcontracts or orders pursuant to Subparagraph (b) of this clause;
- (iv) the reasonable settlement costs of the Bidder including accounting, 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 subcontracts hereunder, 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 Bidder under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Bidder reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under Subparagraph (b) of this Paragraph, and the contract price of work not terminated.
- (d) Cost claimed, agreed to, or established under Subparagraph (b) and (c) of this Paragraph shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

SECTION 13. SEVERABLE PROVISIONS:

If any provision of this agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the agreement and the agreement shall be enforced according to its valid and subsisting terms and provisions. The terms of this Contract shall control in the event of any conflict between this Contract and any other document incorporated or referenced herein.

SECTION 14. GOVERNING LAW AND VENUE:

The validity of this agreement, as well as the rights and duties of the parties to this agreement, shall be governed by the laws of Guam. Moreover, any and all actions governing this agreement shall be brought in the Superior Court of Guam or the Guam District Court if applicable.

SECTION 15. OWNERSHIP OF DOCUMENTS:

All briefs, memoranda and other incidental Bidder work or materials furnished hereunder shall be and remain the property of GWA including all publication rights and copyright interests, and may be used by GWA without any additional cost to GWA.

SECTION 16. INDEMNITY:

Bidder agrees to save and hold harmless GWA, its board members, officers, agents, representatives, successors and assigns and other governmental agencies from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the Bidder, Bidder's officers, agents (including sub-bidders), servants or employees under this Agreement.

SECTION 17. GENERAL COMPLIANCE WITH LAWS:

The Bidder agrees that Bidder is to comply with all Federal and territorial laws, rules, regulations and ordinances applicable to the work being performed hereunder. Bidder shall attach a copy of appropriate business license or an affidavit executed under penalty of perjury that indicates that Bidder is exempt under Guam law (must include legal citations proving exemption).

SECTION 18. ACCESS TO RECORDS AND OTHER REVIEW:

The Bidder, including his sub-bidders, if any, shall maintain copies of all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under the contract, for inspection by the Guam Waterworks Authority. All originals of any documents related to this Contract shall be provided to GWA as soon as possible, but not later than one day prior to the conclusion of this Agreement. Each subcontract by Bidder pursuant to this agreement shall include a provision containing the conditions of this Section.

SECTION 19. SCOPE OF AGREEMENT.

This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to retaining the services of Bidder by the GWA and contains all of the covenants and terms between the parties with respect to such this project. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement and addenda will be effective only if it is in writing signed by the party to be charged. For the purposes of this paragraph and of the entire agreement, the signature of the General Manager for the Guam Waterworks Authority (or his designee) is the only signature that will bind the GWA.

SECTION 20. RESPONSIBILITY OF BIDDER.

In addition to the other requirements set forth in the bid and this Contract, the Bidder shall be responsible for the professional and technical accuracy of all work and materials furnished under this contract. The Bidder shall, without additional cost to GWA, correct or revise all errors or deficiencies in his/her work.

GWA's review, approval, acceptance of, and payment for goods, fee, or for services required under this contract, shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of the Bidder's failure of performance of this contract and the Bidder shall be and remain liable to the GWA for all costs of any kind which may be incurred by the GWA as a result of the Bidder's negligent or erroneous performance of any of the services performed under this contract. GWA shall continue to remain liable for its own negligent acts and those of its employees and its failure to perform as provided under this agreement.

SECTION 21. CHANGE ORDERS.

By written order, at any time, and without notice to Bidder's surety, GWA may, subject to all appropriate adjustments, make changes within the general scope of work of this Contract in any one or more of the following:

- 1. Drawings, designs or specifications, if the supplies, goods or services to be furnished are to be specifically manufactured for GWA in accordance therewith;
- 2. Method of shipping or packing; or
- 3. Place of delivery.

If any such change order increases or decreases the Bidder's cost of, or the time required for performance of any part of the work under this contract, whether or not changed by the order, an adjustment shall be made and the contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this Contract.

Failure of the parties to agree to an adjustment shall not excuse the Bidder from proceeding with the Contract as changed, provided that GWA promptly and duly make such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, the Bidder shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

Within 30 days after receipt of a written change order, unless such period is extended by GWA in writing, the Bidder shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Bidder's claim unless GWA is prejudiced by the delay in

notification. No claim by the Bidder for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

In the absence of such a change order, nothing in this clause shall be deemed to restrict the Bidder's right to pursue a claim arising under the contract if pursued in accordance with the clause entitled "Claims Based on Acts or Omissions by GWA" of this Contract.

SECTION 22. STOP WORK ORDERS.

GWA may by written order to the Bidder, at any time, and without notice to any surety, require the Bidder to stop all or any part of the work called for in the Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is received by the Bidder, unless the parties agree to any longer period. Upon receipt of the order, the Bidder shall comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties have agreed, GWA shall either cancel the work order or terminate the work covered by the order as provided under the Termination for Default or Termination for Convenience Clauses contained in this contract.

If a stop work order issued under this clause is cancelled at any time during the period specified in the order, of the period of the order or any extension thereof expires, the Bidder shall have the right to resume work. An appropriate adjustment shall be made to the delivery schedule or Bidder only if: (a) the stop work order results in an increase in the time required for performance or the Bidder's cost; and (b) if the Bidder asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GWA decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract. If a stop work order is not cancelled and the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed pursuant to the price adjustment clause of this Contract.

SECTION 23. CLAIMS BASED ON ACTS OR OMISSIONS BY GWA.

If any action or omission on the part of GWA requiring performance changes within the scope of the contract constitutes the basis for a claim by the Bidder for additional compensation, damages, or an extension of time for completion, the Bidder shall continue with performance of the contract in compliance with the directions or orders of GWA, but by so doing, the Bidder

shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:

- (a) the Bidder shall have given written notice to GWA:
 - (i) prior to the commencement of the work involved, if at that time the Bidder knows of the occurrence of such action or omission:
 - (ii) within 30 days after the Bidder knows of the occurrence of such action or omission, if the Bidder did not have such knowledge prior to the commencement of the work; or
 - (iii) within such further time as may be allowed by the Procurement Officer in writing.

This notice shall state that the Bidder regards the act or omission as a reason which may entitle the Bidder to additional compensation, damages, or an extension of time. The Procurement Officer or designee of such officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Procurement Officer or designee of such officer.

- (b) the notice required by Subparagraph (a) of this Paragraph describes as clearly as practicable at the time the reasons why the Bidder believes that additional compensation, damages, or an extension of time may be remedies to which the Bidder is entitled; and
- (c) the Bidder maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

Nothing herein contained, however, shall excuse the Bidder from compliance with any rules of law precluding any GWA official or its Bidders from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

Any adjustment in the contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

SECTION 24. EFFECTIVE DATE OF THIS CONTRACT.

This agreement shall take effect upon the date it is signed by both the General Manger and the Bidder and the date of this agreement shall be when the General Manager affixes his signature.

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IN WITNESS WHEREOF the part and year first written.	ties hereto have executed this contract as of the da		
GUAM WATERWORKS AUTHORITY	: BIDDER:		
Miguel C. Bordallo, P.E. GWA General Manager	Bidder's Authorized Representative		
Date:	Date:		
Certified Funds Available:	Approved as to Form:		
Certifying Officer Guam Waterworks Authority	Theresa G. Rojas, Esq. Legal Counsel, GWA		
Date:	Date:		
Guam Business License or Certificate of Au	nthorization No.:		
Contract No.:	Vendor No.:		
Contract Amount	Cartifying Officer		

Amount Certified:	Date:
Source of funding:	
1	
/	
1	
/	
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the Secretary of the corporation or managing partner named as Bidder herein; that who signed this contract on behalf of the Bidder, was then of said corporation/partnership by authority of said	
I,certify that I am the Secretary of the corporation or managing partner named as Bidder herein; that who signed this contract on behalf of the Bidder, was then of said corporation/partnership by authority of said	
I,	certify that I am
the Secretary of the corporation or man	aging partner named as Bidder herein; that
	certify that I am f the corporation or managing partner named as Bidder herein; that who signed this contract on behalf of the Bidder, was then of said corporation/partnership by authority of said governing body, and is within the scope of its corporate/partnership powers ration/partnership to the terms and conditions of this Contract.
CORPORATE OR PARTNERSHIP CERTIFICATION AS TO AUTHORIZATION TO BIND	
to hind said corporation/partnership to the term	CORPORATE OR PARTNERSHIP CERTIFICATION AS TO AUTHORIZATION TO BIND
to ome said corporation partiters in to the ten	ns and conditions of this Contract.
Signed:	
Corporate Secretary	
Date:	
Date:	

(CORPORATE/PARTNERSHIP SEAL)

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***** END OF CONTRACT *****

EXHIBIT B

GWA IFB 2022-01



GUAM WATERWORKS AUTHORITY

"Better Water. Better Lives."
Gloria B. Nelson Public Services Building
688 Route 15, Mangilao, Guam 96913

MEMORANDUM

TO:

General Manager

VIA:

Supply Management Administrator

FROM:

Evaluation Committee Members

SUBJECT:

Invitation to Bid No. GWA 2022-01

Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded

REF:

Recommendation of Award

DATE:

February 08, 2022

Virtual Bid Opening Date and Time:

Date opened.

January 31, 2022

Time:

11:00 a.m.

Bid Packages Picked-up / Obtained from GWA website at www.guamwaterworks.org

- 1. IP&E Holdings, LLC
- 2. Morrico Equipment LLC
- 3. Cars Plus, LLC
- 4. Visual Infomedia
- 5. Mobil Oil Guam Inc

Bid Package Submitted In-Person

- 1. Mobil Oil Guam Inc.
- 2. IP&E Holdings, LLC

- Vincent Pangelinan, Water Operations Manager
- Antonio Camacho, Buyer II

Evaluation Finding:

An evaluation committee was formally assembled and met on February 04, 2022 at 10:00 am to review/discuss and evaluate the bid submittals. Completing the evaluation, the committee members have determined that IP&E Holdings bid submittal is deemed responsive and have complied with all terms & conditions and requirements set for in the IFB. In Closing the committee members agreed to proceed and award the following line items to IP&E as the lowest responsive, responsible offer:

SECTION 1.03: CONTRACT PRICE

Bid Price Offer:

(a) Diesel Fuel Oil No. 2: <u>\$ 2.802</u> per gallon

(b) Automotive Gasoline, Regular Unleaded: \$2.925 per gallon

SUMMARY:

Contract Term.

The Contract Term shall be for three (3) years, with an option to extend for one (1) additional two (2) year renewal terms upon mutual agreement of both parties. The contract price for each year shall be at the same price as contract price offer and all other terms remain unchanged unless other terms are agreed upon between the parties.

End of Evaluation:

Your approval is greatly appreciated.

Roland F. Lumongsud, Buyer II

Reviewed by legal:

IFB 2022-01 Diesel Fuel Oil No. 2 and Automotive Gasoline, Regular Unleaded

Concurred and accepted by the committee members:

Paul Lujan, FMES Superintendent

Vincent Pangelinan, Water Operations Manager

Antonio Camacho, Buyer II

In consideration of the foregoing, please indicate your approval of this recommendation by your signature below.

[]UNCONCURRED

VINCENT ED. GUERRERO, SMA

[APPROVED [] DISAPPROVED

MIGUEL C. BORDALLO, P.E. GENERAL MANAGER

EXHIBIT C

GWA IFB 2022-01



PROPOSED CONTRACT

GWA FLEET FUELS SUPPLY
DIESEL FUEL OIL NO. 2 and AUTOMOTIVE GASOLINE REGULAR UNLEADED

IP&E Holdings, LLC dba IP&E GUAM

Invitation for Bid GWA-2022-01 January 31st, 2022 at 10:00am

Attention:

GWA Procurement Office Guam Waterworks Authority

Gloria B. Nelson Public Service Building

688 Route 15

Mangilao, GU 96913

EMAIL: psbids@guamwaterworks.org

Fax No. 671 649 3750

SECTION 1.02: TERM.

SECTION 1.03: CONTRACT PRICE.

The total contract <u>BID PRICE</u> per gallon delivered to GWA Fleet point of delivery is (in U.S. Dollars, inclusive of all costs and liabilities, please provide three (3) decimal places):

- 1. Bid Price Offer:
- (a) Diesel Fuel Oil No. 2:

\$ 2.802 per gallon

(b) Automotive Gasoline, Regular Unleaded:

\$ 2.925 per gallon

The BID PRICE is the sum of the fixed service fee (per gallon) and the bid reference prices as of October 27, 2021 posting in Platts' Asia-Pacific Market Scan Oil Prices are as shown:

Bid Reference prices:

Fleet Fuels

Reference Product Code

Reference Price

(a) Diesel Fuel Oil No. 2

Gasoil 10 ppm

\$2.302 per gallon

(b) Automotive Gasoline (Regular Unleaded)

Gasoline 92 unleaded

\$2.435 per gallon

PRICE DETERMINATION:

The invoice price for the fuel delivered in any month shall be the average of the effective prices reported for Gasoil 10ppm (for Diesel Fuel Oil No. 2) and Gasoline 89 unleaded (for Automotive Gasoline, Regular Unleaded), for all the daily postings of the previous month in the Platt's Asia-Pacific Market scan, for Singapore cargoes, plus the Service Fee as calculated.

The gas stations should be properly labeled to indicate the product grade at its pump. In the event that the gas station pump has not fully converted to Ultra-Low Sulfur Diesel (ULSD) as set forth in Section 2.01, then the invoice price for Diesel Fuel Oil No. 2 delivered in any month shall be reduced and shall be based on the average of the effective prices reported for Gasoil Reg 0.5% Sulfur.

EXHIBIT D

NOTICE OF CONDITIONAL AWARD FOR IP&E, LLC



Gloria B. Nelson Public Service Building 688 Route 15, Mangilao GU, 96913

NOTICE OF CONDITIONAL AWARD

IP&E Holdings, LLC

DBA: IP&E GUAM

SUITE 100, 643 CHALAN SAN ANTONIO

TAMUNING, GUAM 96913

Ph.: 671.647-0000 Fax: 671.649-4353

Re: Invitation for Bid Number: IFB 2022-01 Diesel Oil No. 2 and Automotive Gasoline

Regular Unleaded

Hafa Adai MacAdex Annien. Mr. Brian Bamba,

The Guam Waterworks Authority ("GWA") has considered the bid submitted by IP&E Guam for the above-described reference in response to its Advertisement for Bids dated January 31, 2022 and you are hereby notified that the bid price for Items No 1 (a) & (b) has been accepted by GWA. Please be advised that you must now deliver all other documents required by the bid, including, but not limited to:

- Proof of Insurance: (if applicable/required part of the bid requirements.)
- Performance and Payment Bond: (if applicable/required part of the bid requirements.)

(Which must remain in full force and effect until all performance has ended, which includes all warranty periods).

You are also advised that any obligation incurred by your firm prior to execution of the contract is entirely at your own risk and GWA shall have no obligation to reimburse costs incurred prior to execution of the contract.

Please note this Notice of Award is conditional on obtaining the approval of the Guam Consolidated Commission on Utilities for any award over \$750,000 and the approval of the Guam Public Utilities Commission where the total value over the life of the contract could exceed \$1M. Also, award is conditional upon providing any documents such as proof of licensure, proof of insurance or other documents required to be submitted to GWA under the Bid or Guam law.

You are required to return an acknowledged copy of this Conditional Notice of Award to GWA Procurement Office.

Sincerely,

Miguel C. Bordallo. P.E.

Date: 03/02/2022

General Manager

ACCEPTANCE OF CONDITIONAL NOTICE OF AWARD

r:KC	HAIN BIND	. Title: NHWGNE DIRECTOR	
Sign	ature	(Please Print)	_
ted this W	day of MARCH	, 2022.	