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9 *Counsel for Guam Power Authority*

10 **BEFORE THE GUAM PUBLIC UTILITIES COMMISSION**

11 **IN THE MATTER OF:**) **GPA DOCKET NO. 26-09**
12)
13 **PERFORMANCE MANAGEMENT**) **PETITION OF THE GUAM POWER**
14 **CONTRACT FOR CT POWER PLANTS**) **AUTHORITY TO APPROVE AWARD OF**
15) **PERFORMANCE MANAGEMENT**
16) **CONTRACT FOR COMBUSTION**
17) **TURBINE POWER PLANTS**
18)
19)
20)
21)

22 The Guam Power Authority (GPA) petitions the Guam Public Utilities Commission
23 (PUC) to approve the award of a performance management contract (PMC) for GPA’s
24 combustion turbine (CT) power plants. In support of the petition, GPA attaches the resolution
25 of the Consolidated Commission on Utilities (CCU) on this matter. *See* Ex. A (CCU GPA
26 Resolution No. FY2026-13 (Feb. 24, 2026)).

27 **I. Background**

28 GPA maintains several CT power plants in Dededo, Macheche, and Yigo to contribute
29 to and support the reliability of the island-wide power system.

30 In GPA Docket No. 25-06, the PUC authorized GPA to solicit for a new PMC for
31 GPA’s CT power plants. *See* Dkt. No. 25-06, Order at 7 (Jan. 30, 2025). Following a
32

1 competitive procurement under multi-step IFB GPA-015-25, GPA selected Marianas Energy
2 Corporation (MEC), the lowest, most qualified of two bidders.

3
4 The cost of the contract is \$4,010,207.00, which covers fixed management fees as well
5 as operating and maintenance costs for a three-year base term, or \$1,336,735.67 per year. The
6 contract includes two optional one-year extensions that add up to \$2,667,691.00, or
7 \$1,333,845.00 per year. The total contract price with extensions is \$6,677,898.00, an average
8 of \$1,335,579.60 per year. In its recent resolution, the CCU authorized GPA to award the PMC
9 to MEC, subject to the PUC's approval. Attached as Exhibit B is a copy of the form contract.
10
11 The source of funding is revenue funds.
12

13 **II. Request for Approval**

14
15 The PUC's contract review protocol for GPA requires PUC authorization for all
16 contracts in excess of \$1.5 million. The total cost of the contract in this case triggers contract
17 review.
18

19 This contract extension is necessary because, without a PMC, GPA will not be able to
20 ensure the safe and efficient operation and maintenance of the CT power plants.
21

22 The contract extension is reasonable because of the annual cost of approximately
23 \$1.33 million. The PUC recently approved a 5-month extension of the existing CT PMC (to
24 allow for the completion of the solicitation) at a monthly rate of \$129,319.79, which
25 extrapolates to \$1,551,837.48 annually.
26

27 Finally, the contract extension is prudent, because it ensures the continuity of essential
28 services at a reasonable price.
29
30
31
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1 **III. Conclusion**

2 Based on the foregoing, GPA requests that the PUC approve the award of the CT PMC
3 to MEC for a base term of three years, with two one-year options to renew. The requested
4 award is reasonable, necessary, and prudent.
5

6 Respectfully submitted this 6th day of March, 2026.

7 *Attorney for Guam Power Authority*

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10 By: *M. Wołoschuk*
11 MARIANNE WOLOSCHUK
12 GPA Legal Counsel
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GPA RESOLUTION NO. FY2026-13

**RELATIVE TO AUTHORIZING THE GUAM POWER AUTHORITY (GPA) TO
AWARD THE PERFORMANCE MANAGEMENT CONTRACT FOR GPA'S
COMBUSTION TURBINE POWER PLANTS**

WHEREAS, the Guam Power Authority (GPA) has utilized Performance Management Contracts (PMC) for the management of the operations, and maintenance of the Dededo, Macheche and Yigo Combustion Turbine (CT) plants since March 2016; and

WHEREAS, under the PMC contractor the CTs were able to perform maintenance and execute projects to maintain reliability and availability to support the Island Wide Power System (IWPS) most especially after the loss of Cabras 3&4 in August 2015, during the Cabras boiler incident in February 2022, during the extended outages of Piti 8&9 for the fuel oil conversion projects in 2022 and the recent capacity shortfalls post Typhoon Mawar and early 2024; and

WHEREAS, GPA issued an IFB No. GPA-015-25 for a Performance Management Contract for the continued Management, Operation, and Maintenance of GPA's CT Power Plants for a 3-year base term and optional two each, 1-year extensions, in order to meet the increasing power demands and provide the reserve capacity for planned and forced generation outages; and

WHEREAS, the estimated cost for a PMC contract for the CT Plants over the base contract of three years was over \$2.4M for fixed management fees, \$2.6M for reimbursable O&M costs, with a possibility of going to an estimated total of \$6M for all years with extensions; and

WHEREAS, two qualified bidders participated in the bid, and

WHEREAS, the lowest, most qualified, bidder was Marianas Energy Corporation that bid \$4,010,207.00 for Fixed Management Fees (FMF) and O&M costs for the base price of 3 years, and \$2,667,691 for the 2-each, 1 year. extensions; for a total price, including extensions, of \$6,677,898.00; and

WHEREAS, this makes the CT PMC \$1,336,735.67 per year, for the 3 base years, and \$1,333,845.50 per year, for the 2-each, 1-year optional extensions.

WHEREAS, under the PUC Procurement Protocol GPA is required to obtain approval for procurement in excess of \$1.5M.



GUAM POWER AUTHORITY
ATURIDÁT ILEKTRESEDÁT GUÁHAN
P.O.BOX 2977 • HAGÁTÑA, GUAM U.S.A. 96932-2977

January 26, 2026

MEMORANDUM

TO: Supply Management Administrator
FROM: Bid Evaluation Committee
SUBJECT: Multi-Step Bid No. for GPA-015-25
 Combustion Turbine Performance Management Contract
 Step 2 Price Proposal Evaluation

To Whom It May Concern:

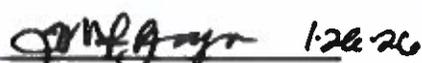
The Bid Evaluation Committee has completed the evaluation of the price proposals submitted for Multi-Step Bid No. GPA-015-25 on January 26, 2026. The price proposals are listed in the Table, below.

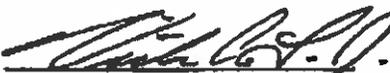
Table 1. Bidder Price Proposals

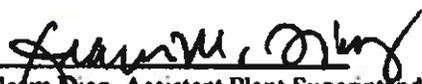
	BIDDER	Base Price	Extension Years (Basis of Award)
1	TEMES, INC.	\$4,554,545.22	\$7,823,190.38
2	Marianas Energy Corporation	\$4,010,207.00	\$6,677,898.00

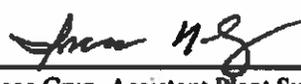
The lowest, qualified, bidder is Marianas Energy Corporation. Therefore, the Committee recommends that the Combustion Turbine Performance Management Contract be awarded to Marianas Energy Corporation.

If you should have any questions, please do not hesitate to contact me at EXT. 8358


 Juliana M.F. Baza, Engineer III


 Victor Torres, Engineer III

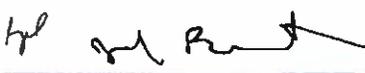

 Jean Diaz, Assistant Plant Superintendent
 CT Power Plants


 Isaac Cruz, Assistant Plant Superintendent
 Piti 7 Power Plant

Concurred by:

Approved Disapproved


 for Jennifer G. Sablan, P.E.,
 Asst. General Manager, Operations


 John M. Benavente, P.E.
 General Manager

1/28/2026
 Date

1.0 Form of Contract

The DRAFT CONTRACT attached on the section that follows is the Form of Contract GPA intends to enter into with the CONTRACTOR. Any questions, clarifications, corrections or changes should be sent by the BIDDER to GPA prior to the deadline for proposals so it can be addressed by GPA prior to Proposal Evaluations.

Exceptions and major changes to the contract shall not be accepted upon award and Contract Finalization.

GPA-XXX-XXX

Form of Contract

**PERFORMANCE MANAGEMENT CONTRACT
FOR THE GUAM POWER AUTHORITY
Combustion Turbine Power Plants
Performance Management Contract**

between

GUAM POWER AUTHORITY

and

(CONTRACTOR)

OCT 2025

Performance Management Contract

2025

CT Power Plants Units

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Form of Contract

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PERFORMANCE MANAGEMENT CONTRACT

This Performance Management Contract ("PMC") is made and entered into on _____, 2025
by and between:

Contractor, (Name of Organization), (type of organization), duly organized and existing under the laws of _____ and licensed, registered and qualified to do business in Guam with its principal address at _____;

-and-

GUAM POWER AUTHORITY, ("GPA") a Public Corporation with its office located at the Gloria B Nelson Public Service Building, 688 Route 15, Mangilao, Guam, 96913.

RECITALS

WHEREAS, GPA desires to ensure the reliability and availability of the CT Power Plants in order to meet capacity requirements at least until the new Ukudu Power Plant is commissioned and actively operating; and

WHEREAS, the Consolidated Commission on Utilities has determined that a PMC is the preferred option for GPA to ensure continued effective generation outage planning, maintenance, and overall performance of its CT Power Plants; and

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered that GPA retain a Contractor for its CT Power Plants; and

WHEREAS, GPA seeks to engage the professional services and assistance of Contractor to provide operations, maintenance, and management services, outage planning and scheduling, budgeting, procurement, and such other services as are specified herein; and

WHEREAS, GPA has agreed to supply fuel to the generating power station upon the terms and subject to the conditions hereinafter appearing; and

WHEREAS, Contractor is fully willing to provide, and is capable of providing, the repair and/or replacement of the units, relocation, installation, operation and management, maintenance and repair services set forth in the Invitation for Bid (IFB) and this Agreement in accordance with the terms and conditions thereof.

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

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Form of Contract

SECTION 1 – DEFINITION OF TERMS

In this Agreement and in the Recitals hereto:

“Approved” , when applied by ENGINEER to Contractor’s drawings or documents, means that the drawings or documents are satisfactory from the standpoint of interfacing with GPA furnished components, and/or that ENGINEER has not observed any statement or feature that appears to deviate from the Specification requirements.

“Approved As Revised” when applied by ENGINEER to Contractor’s drawings or documents means that the drawings or documents are approved as defined above as long as the corrections shown and/or revisions are applied. The revisions are required for the proper interfacing with GPA furnished components or are necessary to be in conformance with the Specification’s requirements.

“Change Order” means a written instrument to Contractor signed by GPA authorizing an addition, deletion, or revision in the Goods or Special Services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract Agreement.

“Claim” means any dispute or disagreement brought in accordance with the Guam Procurement Law, 5 GCA §5001 et seq., and the Government Claims Act of Guam, 5 GCA §6101 et seq., and the procedures thereunder.

“Combustion Turbine Power Plants” or “CT Power Plants” means the Dededo CT 1 and CT2 power plant, Macheche CT power plant, Yigo CT power plant and Piti 7 CT power plant, respectively.

“Commencement Date” means the date upon which Contractor assumes operational control of GPA’s CT Power Plants Units.

“Completion Date” means the date indicated as the day the project is completed in the Contract, or the last day of any extension of this Contract.

“Contractor” means the Contractor with whom GPA has entered into the Contract Agreement.

“Contract Agreement” or “Contract” or “Agreement” means the written agreement between GPA and Contractor covering the furnishing of the Goods, Special Services, and other services in connection therewith, evidencing what is contemplated and agreed to between the parties, including any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

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

Performance Management Contract

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CT Power Plants Units

the Contract Agreement.

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

“Dededo CT Units” means the Dededo CT Units consisting of two (2) 22-megawatt generator units. Comprehensive information concerning the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment is fully set forth in Schedule F of this Contract.

“Defective” means an adjective, which when modifying the words Goods or Special Services, refers to Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.

“Delivery Time” means the total number of days or the dates stated in the Agreement for furnishing the Goods and/or Special Services.

“Deliverable Work Product” means such reports, products, or services that Contractor is required to provide to GPA in accordance with this Contract, and such other work product as may be specified in the IFB.

“Drawings” means all official drawings approved by the ENGINEER and showing the character and scope of the Goods to be furnished.

“Effective Date of the Contract Agreement” means the date indicated in the Agreement on which it becomes effective, or if no such date is indicated, the date by which the Contract is signed by both parties.

“ENGINEER” or “ENGINEERS” means GPA's engineer duly appointed as “ENGINEER”. GPA shall assign several ENGINEERS as required to cover specialized areas of expertise.

“ENGINEER's Instructions” means written instructions issued by ENGINEER which clarify or interpret the Contract Documents or order minor changes or alterations in the Goods or Special Services to be furnished but which do not involve a change in the Purchase Price or the Delivery Time.

“Equivalent Availability” is as defined in the North American Electric Reliability Corporation (NERC) standards.

“Final Payment” means the last payment made by GPA to Contractor after delivery and acceptance of all Services as herein specified and performed under this Agreement. For purposes of said term refers to the date upon which GPA made the final or last payment due to Contractor for a specific good, performance item, work task or service, and not the last payment made by GPA to Contractor arising from

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the Contract.

“Force Majeure” means those events or acts specified in Section 18 – FORCE MAJEURE of this Contract.

“Forced Outage” is as defined in the NERC standards.

“FTE” means “Full Time Equivalent Employee,” or the availability of one full time employee for no less than two thousand and eighty work hours in one calendar year.

“Fuel” means the Distillate Fuel delivered by GPA that has the fuel specifications described in Schedule G of the IFB.

“Fuel Specifications” means the specifications as to the quality and method of storage, supply and delivery of the fuel for CT Power Plants as described in Schedule G of the IFB.

“Fuel Supply Procedures” means the procedures and parameters for the supply and delivery of fuel by GPA as described in Schedule G of the IFB.

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

“Goods” means all property required to be furnished by Contractor under the procurement documents.

“Guam Power Authority” means that public corporation of the Government of Guam or its successors, which has statutory authority to operate and maintain public power on Guam.

“Heat Rate” means the ratio of the amount of heat energy required to produce a given amount of electrical energy.

“Insurance” has the meaning specified in SECTION 16 – INSURANCE of this Contract.

“Macheche CT” or “Macheche CT Unit” means the Macheche CT Unit consisting of one (1) 22-megawatt generator unit. Comprehensive information concerning the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment is fully set forth in Schedule F of this Contract.

“Modification” means a written amendment of the Contract signed by both parties, or Change Order, or ENGINEER's Instructions.

“Month” means the period beginning the first day of the calendar month.

“O&M Spending” means spending for certain categories of operations and maintenance expenditures directly impacting GPA's total O&M costs. Such expenditures need to be optimally controlled

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CT Power Plants Units

by the Contractor in order to maximize the total benefit to GPA and its customers.

“Operation & Maintenance Contract” means this Contract for the management, operation, and maintenance of the CT Power Plants.

“GPA” means the Guam Power Authority, a Public Corporation.

“Performance Bond” means that Performance Bond or guarantee of a financial institution or similar security acceptable to GPA in the amount as specified in the IFB. Provision of such Performance Bond by the Contractor is a condition precedent to the formation and execution of this Contract, and failure by the Contractor to furnish a Performance Bond at the time specified and in the manner provided, or to maintain such Performance Bond in full effect during the term of this Contract, is grounds for cancellation of the Contract.

“Planned Outage” means an outage scheduled by Contractor and GPA as defined in the NERC standards.

“Piti 7” or “TEMES 7 Power Plant” means the power plant consisting of one (1) 40-megawatt generator unit. Comprehensive information concerning the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment is fully set forth in Schedule F of this Contract.

“Point of Delivery” means the place at which property interest in the goods passes to GPA and is CIF landed at job-site, Guam, unloaded.

“Power Stations” means the Combustion Turbine Units: Dededo CT 1 and CT 2, Macheche CT, Yigo CT and Piti 7 (TEMES 7).

“Procurement Officer” means the General Manager of GPA or the General Manager's designee.

“Project” means the CT Power Plants, facilities, or works that the Goods and Services are to be used for or incorporated into.

“Project Scope” means the scope of the supply of work of the contractor in connection with the Project.

“Qualified GPA Employee” means an employee who on and after the Commencement Date: (1) GPA certifies is in compliance with GPA's Drug Free Workplace Policy; (2) by reason of education, training and/or experience, possesses the requisite qualifications for and capability to perform, as established by the Civil Service Commission, the duties and responsibilities of the position to which the employee is to be assigned; (3) has had satisfactory performance reviews within GPA; (4) if assigned by GPA to the CT

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CT Power Plants Units

Power Plants, performs in a manner satisfactory to Contractor.

“Scope of Services” means those services set forth in Section 2 of this Contract and as indicated in the IFB hereto, a copy of which is attached hereto and incorporated herein by reference.

“Site” means the area where the Project is to be executed. In this case, the Site is the CT Power Plants.

“Special Services” means services to be furnished by Contractor at the CT Power Plants as required by the Contract Agreement.

“Termination Date” means the date the Contract ends or is terminated due to provisions given in the Contract for both parties.

“Yigo CT” or “Yigo CT Unit” means the Yigo CT Unit consisting of one (1) 22-megawatt generator unit. Comprehensive information concerning the plant's design, historical performance, operation, maintenance activities, future maintenance, capital requirements and condition assessment is fully set forth in Schedule F of this Contract.

SECTION 2 – PURPOSE AND SCOPE OF SERVICES

2.1 Purpose. GPA hereby retains Contractor to manage, operate and maintain the Combustion Turbine (CT) Power Plants. By awarding the Contract, the goal of GPA is to improve the efficiency, reliability, operations, and maintenance of the CT Power Plants.

2.2 The Scope of Services to be Rendered. Contractor shall be responsible for the following:

- 1) Management, operation, and maintenance of the Combustion Turbine Power Plants;
- 2) Accomplishment of the life extension projects as well as projects ensuring the units meet or maintain availability, reliability and efficiency standards;
- 3) Supervision of plant staff;
- 4) Meeting specified performance standards objectives including but not limited to capacity, availability and efficiency;
- 5) Meeting all environmental compliance rules and regulations;
- 6) Procurement, inventory control and management;
- 7) Other responsibilities and duties as cited in the IFB; and
- 8) Services and deliverables as set forth in the IFB.

2.3 Key Performance Indicators. Contractor shall utilize best operation and maintenance

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Performance Management Contract

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CT Power Plants Units

practices, training and management techniques to accomplish key performance indicators for the CT Power Plants including:

- 1) Equivalent availability;
- 2) Relative heat rate;
- 3) Emission Guarantees; and
- 4) Other Performance Indicators as may be requested by GPA.

SECTION 3 – CONDITIONS PRECEDENT

3.1 Contractor's Submittals. Contractor shall supply the following to GPA, each in form and substance satisfactory to GPA unless such condition precedent is waived by GPA:

- 1) Copies of resolutions adopted by Contractor's Board of Directors authorizing the execution, delivery and performance by Contractor of this Agreement certified by the company secretary of Contractor in a manner satisfactory to GPA;
- 2) A performance bond as specified in SECTION 25 – PERFORMANCE BOND of the Contract;
- 3) A copy of the Articles of the Incorporation of Contractor, certified by the company secretary in a manner satisfactory to GPA;
- 4) A copy of Contractor's license to do business in Guam; and
- 5) A legal opinion of Contractor's legal counsel in form and substance the equivalent of GPA's general counsel opinion.

3.2 GPA's Submittals. GPA shall supply the following to Contractor, each in form and substance satisfactory to Contractor unless such condition precedent is waived by Contractor:

- 1) Copies of resolutions adopted by the Consolidated Commission on Utilities authorizing the execution, delivery and performance by GPA of this Agreement, each certified by the corporate secretary of GPA in a manner satisfactory to Contractor; and
- 2) A legal opinion of GPA's Staff Attorney concerning its corporate authority.

3.3 Insurance. Contractor shall obtain all insurance specified in SECTION 16 – INSURANCE of this Agreement.

SECTION 4 – CONTRACT DOCUMENTS

GPA-XXX-XXX

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Form of Contract

Performance Management Contract

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CT Power Plants Units

4.1 Documents Included. It is mutually agreed that the following lists of documents which are attached hereto, bound herewith or incorporated herein by reference shall constitute the Contract Documents, all of which are made a part hereof, and collectively evidence and constitute the contract between the parties hereto, and they are as fully a part of this Agreement as if they were set out verbatim and in full herein, and are designated as follows:

- 1) IFB GPA-XXX-25;
- 2) Amendments to IFB GPA-XXX-25;
- 3) This Operation & Maintenance Contract;
- 4) The Performance Bond;
- 5) Affidavit of Disclosure of Ownership;
- 6) Audited financial information of Contractor's firm and all subcontractors that will be used in the Performance Management of CT Power Plants;
- 7) Certificate of Good Standing to conduct business in jurisdiction of residence;
- 8) Non-Collusion Affidavit;
- 9) Ethical Standards Affidavit;
- 10) No Gratuities or Kickbacks Affidavit;
- 11) Declaration re Compliance with US DOL Wage Determination;
- 12) Restriction Against Sex Offenders Employed By Service Providers to Government of Guam from Working on Government of Guam Property; and
- 13) Contingent Fee Form.

4.2 Discrepancies. In the case of discrepancies or conflicts between the above-referenced contract documents, this Agreement shall take precedence over IFB GPA-XXX-25, and Contractor's proposal submitted in response to the IFB. In case of any discrepancies or conflicts between the Amendments to IFB GPA-XXX-25 and GPA-XXX-25, the Amendments to IFB GPA-XXX-25 shall take precedence. Should Contractor believe that there is any discrepancy or inconsistency between this Agreement and the other Contract Documents, Contractor shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

4.3 Presumption of Familiarity. It will be conclusively presumed that Contractor has read, examined, and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. Contractor is assumed to be familiar with all federal (U.S.) and local Guam laws, ordinances, rules and regulations that in any manner affect the work. Ignorance of law on the

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Performance Management Contract

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CT Power Plants Units

part of Contractor will not relieve Contractor from responsibility.

SECTION 5 – CONTRACT TERM

5.1 Term. The term of this Operation & Maintenance Contract shall be for a five-year period commencing on or about January 2026 and terminating on January 2031. The contractual obligation of GPA and Contractor is subject to the availability of funds.

5.2 Extension. Prior to the expiration of the five-year contract term, GPA may, at its election, extend the contract for up to three (3) years with two (2) additional one-year (1-year) terms. If the Agreement is to be renewed, then the parties shall meet and discuss the new terms and conditions of the Agreement six months before the Termination Date.

5.3 Notice of Extension. GPA shall notify Contractor in writing of its intent to extend the contract no later than six months before the current Completion Date.

5.4 Negotiation. GPA and the Contractor shall negotiate the contract extension terms based on the optimum requirements for the CT Power Plants. These requirements shall be considered as starting points between GPA and the Contractor, should GPA elect to exercise the optional contract extension. Final confirmation by mutual agreement between GPA and the Contractor for contract extension shall be given after completion of negotiation no later than six months before the Termination Date. However, GPA may elect to reverse its decision without penalty at any time within six months of the end of the contract period based on poor Contractor performance during this period.

5.5 Additional Services. Contract shall include options for the Contractor to provide additional PMC services to other similar power plants owned and/or operated by GPA, such as, but not limited to, the following Diesel plants: Tenjo Vista Diesel Power Plant, Talofoto Diesel Power Plant, and Manenggon Diesel Power Plant. The terms and pricing of the additional services shall be negotiated between GPA and the Contractor, and summarized in an amendment to this Agreement.

SECTION 6 – OPERATION OF THE COMBUSTION TURBINE UNITS

6.1 Contractor's Responsibility. Contractor shall assume full responsibility for the management, operation, maintenance and repair of the CT Power Plants, including all regularly scheduled preventative or remedial maintenance and any maintenance required due to a CT Power Plants forced outage. Contractor shall perform its duties, to the extent permitted by Guam law, to keep the CT Power Plants in good working order.

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Form of Contract

Performance Management Contract

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6.2 Procure OEM and Non-OEM Support as Required. Contractor shall be responsible for procuring all OEM and non-OEM assistance required to support the daily operation and maintenance of the CT Power Plants.

6.3 Management of the O&M Budget. GPA shall approve the operations and maintenance budget for the CT Power Plants as proposed by Contractor. The budget shall be finalized in writing and approved with execution of this Contract. Contractor shall furnish all agreed upon and required equipment, materials and supplies, and services, keeping within this budget. GPA shall reimburse Contractor for such expenditures to which GPA has given prior written approval. In addition, GPA reserves the right to audit Contractor, using its own staff or outside resources, to ensure that Contractor has implemented adequate cost controls.

Contractor shall develop, monitor and manage the annual CT Power Plants budget. The budget shall not be implemented without the written approval of GPA. In planning the budget, the Contractor will develop a process of justifying activities, personnel, materials and supplies, etc. in support of CT Power Plants mission critical objectives.

6.4 Management Responsibility for CT Power Plants Personnel. Contractor shall provide, to the extent permitted by Guam Law, management and supervision of the staff in the day-to-day performance of its duties in accordance with Contract requirements. The Contractor shall comply with all responsibilities for the management of personnel as required in IFB GPA-XXX-25.

6.5 Contractor Staffing Level. Contractor shall provide all services hereunder as an independent contractor. For the duration of the PMC, Contractor shall have a sufficient number of FTE (Full Time Equivalent employees) physically present and available to ensure that the required services are performed. The number of physically present FTE's on Site at any particular time during the contract period may be more or less, depending on the operational status of the CT Power Plants. GPA may, at its discretion, request that any employee proffered by Contractor be replaced in the event that GPA believes that such employee lacks the requisite experience or expertise. Contractor will engage personnel with such expertise as is necessary to perform the services required hereunder.

6.6 Employee Positions. The Contractor will provide appropriate staffing levels of employees, including:

- 1) (to be identified in the bid)
- 2)
- 3)

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6.7 Hiring of Personnel Contractors and Subcontractors. Contractor may provide, upon prior written consent of GPA, experienced personnel, contractors, and subcontractors, if required during the performance of the services hereunder. The personnel, contractors or subcontractors shall be under Contractor's sole and exclusive direction and control. Contractor shall remain, at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state and local taxes chargeable or assessed with respect to Contractor's personnel, contractors or subcontractors, including, but not limited to, social security, unemployment, federal and state and local withholding, and other taxes. Contractor shall also be responsible for and pay all compensation and/or any reimbursements due to personnel, contractors, and subcontractors, and no additional amounts shall be due from GPA.

The Contractor may, at any time, in consultation with GPA, have Contractor employees or consultants perform functions, duties, and responsibilities at the CT Power Plants as Contractor determines in accordance with the scope of this contract. Reimbursement for salaries and benefits shall be based on rates approved by GPA. Reimbursement shall only be for the period the Contractor's hired employees/consultants are employed and performing work up to the termination date of their employment/contract with Contractor.

6.8 Provision of Listing of Personnel/Contractors/Subcontractors. Contractor shall provide GPA with a listing of the name and address of all personnel, contractors or subcontractors, utilized by it for this project within seven (7) days of the hiring or engagement by the Contractor of such personnel, contractor or subcontractor. These listings shall be subject to GPA approval under the terms stated above.

6.9 Training. For the duration of this Contract and any extension thereof, the Contractor will be responsible for all training and associated costs necessary to perform contract obligations and adhere to regulatory requirements such as OSHA or GOSHA.

6.10 Operations. Contractor shall perform and manage all responsibilities and activities pertaining to the Operation of the CT Power Plants, including all obligations specified under IFB GPA-XXX-25.

6.11 Environmental Compliance. The Contractor shall operate the CT Power Plants in compliance with all environmental and other federal and local laws and regulations of this Agreement, including requirements of the U.S. Environmental Protection Agency (USEPA) and Guam Environmental Protection Agency (GEPA) and shall comply with any changes in such laws, regulations and permits and with any new laws and regulations.

6.12 Maintenance. Contractor shall perform and manage all responsibilities and activities

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pertaining to the Maintenance of the CT Power Plants, including all obligations specified under IFB GPA-XXX-25.

6.13 Specialized Technical and Engineering Support. Contractor shall provide ongoing technical and engineering services to plan major outages, prepare budgetary estimates for major outages, outline project critical tasks and assist in defining reasonable or realistic schedules for completion. In addition, Contractor will:

- 1) Utilize the GPA Computerized Maintenance and Management System (CMMS) to track repairs, preventive maintenance history, materials and labor costs, etc.;
- 2) Ensure that all major outages are planned well in advance and are executed to meet projected budgets, timelines, and all technical specifications of the work;
- 3) Provide effective methods to help manage all major overhauls in specific target areas;
- 4) Provide engineering expertise to evaluate cost effective alternative solutions whenever generation components show greater wear and tear than expected during the outage planning study;
- 5) Assist in developing detailed condition assessment inspections to provide valuable data in planning a major outage for a specific targeted CT Power Plant; and
- 6) The Contractor shall evaluate, monitor and provide recommendations on CT Power Plants operating procedures, employee skill gaps and any other resources (such as reference technical drawings, service manuals, or other tools) that are helpful in the efficient operation of Diesel Units.

6.14 Engineering and Technical Services. Contractor shall provide CT Power Plants engineering and technical services for:

1. Critical repairs;
2. Major maintenance projects;
3. Other repairs, projects activities or technical tasks necessary to maintain reliability, availability, efficiency;
4. Comply with regulatory requirements;
5. Align with resource implementation planning efforts; and
6. Support GPA in other initiatives or projects.

6.15 Procurement Authority. In pursuance of its obligations to furnish equipment, materials,

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supplies and services as agreed by GPA. in maintaining and repairing the CT Power Plants, Contractor shall have the authority to:

- 1) Enter into contracts for the supply of materials and services, including contracts with GPA;
- 2) Appoint and remove consultants and professional advisers;
- 3) Purchase replacement parts and equipment; and
- 4) Perform other obligations as specified in IFB GPA-XXX-25 regarding procurement and outsourcing.

6.16 Inventory Management. Contractor shall be responsible for the management of CT Power Plants inventory, and will perform all obligations related to CT Power Plants including, but not limited to:

- 1) Maintaining required spare parts inventory;
- 2) Recommending tasks for inventory optimization;
- 3) Accounting for specialized tools and assets;
- 4) Inventory management reporting; and
- 5) Performing other obligations as specified in IFB GPA-XXX-25.

6.17 Regulatory Reporting. Contractor shall undertake those communications and reporting requirements for emissions to USEPA and GEPA, and shall provide said reports to GPA to document continued compliance for all contract years.

6.18 Designated Representative. Contractor shall designate an employee as its primary contact for GPA with regard to the services provided hereunder. Contractor shall ensure that this person is reasonably available to GPA management in person during working hours for the term of this contract. If this employee changes roles, is promoted, or is no longer located in Guam or employed by the Contractor, the Contractor shall appoint another employee in a timely manner to communicate with GPA on all matters.

6.19 Compliance with Law. Contractor shall comply, and secure compliance by its subcontractors, with all applicable laws or regulations in connection with the Goods and Special Services furnished hereunder. This includes the securing of any business or other licensing, certifications, or permits required.

If Contractor discovers any variance between the provisions of applicable laws and regulations and the drawings, specifications, and other technical data furnished by GPA. Contractor shall promptly notify GPA in writing thereof and obtain approval of necessary changes from GPA before proceeding with the work affected thereby.

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6.20 Full Efforts. Contractor agrees to exercise reasonable business efforts to perform the required duties and responsibilities under this Agreement in accordance with the laws, rules and regulations of the Government of Guam and the United States.

6.21 Accuracy of Work. Contractor shall be responsible for the professional and technical accuracy of all work and materials furnished under this Contract. Contractor shall, without cost to GPA, correct and revise any material errors or deficiencies in its work.

6.22 Business License. Contractor agrees to obtain and keep current a Guam business license, or other licenses required by law, and to provide proof of such license(s) to GPA.

6.23 Performance. GPA's review, approval, acceptance and payment of fees 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 Contractor's failure to perform in accordance with this Contract.

SECTION 7 – PERSONNEL MANAGEMENT – UTILIZATION OF GPA EMPLOYEES

7.1 GPA Assignment of Existing Employees. GPA shall, unless otherwise provided for in this Section, on the Commencement Date, assign to the CT Power Plants and shall keep assigned to the CT Power Plants all Qualified GPA Employees assigned to and actually working at the CT Power Plants as of the date first written above. GPA shall make the assignments in such manner and at such time as to ensure that the GPA employees so assigned are present for duty at the CT Power Plants on the Commencement Date at the times at which they are normally present.

7.2 Contractor Utilization of Existing GPA Employees. Contractor shall, unless otherwise provided for in this Section, beginning on the Commencement Date and continuing through the Termination Date, utilize all GPA employees assigned to CT Power Plants.

7.3 General Assignment. All GPA employees assigned by GPA to the CT Power Plants at any time under any provision of this Contract shall be a Qualified GPA Employee.

7.4 Personnel Administration. GPA shall, subject to Sections 7.5 through 7.10, perform all personnel administration functions for GPA employees assigned to the CT Power Plants. GPA shall have access to its employees assigned to the CT Power Plants for the purpose of performing its administrative functions. Personnel administration functions shall include but not be limited to:

- 1) Computation and payment of compensation, with GPA retaining its standard responsibilities for all GPA employee payroll expenses and disbursements;

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- 2) Administration of sick leave, maternity leave, paternity leave, annual leave, military leaves of absence and such other programs providing GPA employees authorized absences;
- 3) Recruitment, examination and appointment of new hires;
- 4) Administration of employee benefit plans, health insurance, retirement plans, worker compensation plans, and such other programs for the welfare of GPA employees;
- 5) In-service training programs and such other training programs for which GPA employees are eligible; and
- 6) Such other personnel matters not related to the maintenance, operation, and repair of the CT Power Plants.

7.5 GPA Policies and Procedures. GPA shall take such actions and shall establish, to the extent not already in existence, and implement Departmental policies, procedures, or rules pursuant to appropriate authority, applicable to Contractor and to GPA employees assigned to the CT Power Plants that facilitate and enhance Contractor's ability to efficiently and effectively replace, install, commission, and operate and maintain the CT Power Plants and which, at a minimum, provide for the following:

- 1) In the event that GPA disciplines any GPA employee assigned to the CT Power Plants and imposes the adverse action of suspension ("Disciplined Employee"), GPA shall provide a substitute employee who shall be a Qualified GPA Employee ("Substitute Employee") for the position then occupied by the Disciplined Employee. The Substitute Employee shall work at the CT Power Plants for the period beginning on the day before the suspension of the Disciplined Employee and continuing through the day after the suspension ends. This requirement for GPA to provide a Substitute Employee also applies to a suspension of an employee during the notice period of the disciplinary procedures and when an employee is placed on administrative leave pending adverse action;
- 2) Contractor approval of GPA employee absences for sick leave, maternity leave, paternity leave, family medical leave, annual leave, military leaves of absence and such other programs providing for GPA employee authorized absences. Contractor shall grant approval in accordance with applicable Civil Service Regulations and shall not unreasonably deny employee requests for authorized

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- absence. Contractor disapproval of GPA employee requests for authorized absence shall be based solely upon scheduling needs to ensure the safe and efficient repair, operation, and maintenance of the CT Power Plants;
- 3) Contractor authority to schedule extended hours, staggered hours, flexible hours and Sunday working hours as Contractor may determine necessary to ensure the safe and efficient refurbishing, operation, and maintenance of the CT Power Plants;
 - 4) Reserved;
 - 5) Contractor authority and discretion to recommend counsel or recommend to issue written warnings to individual employees for unsatisfactory work performance and violations of work rules, conduct rules, safety procedures, or other conduct Contractor determines to be detrimental to the safe and efficient repair, operation, and maintenance of the CT Power Plants. In its sole discretion, GPA may accept the recommendation and take disciplinary action, as it deems appropriate. Contractor shall cooperate and assist GPA by providing documentation such witnesses and evidence as GPA may reasonably request to support any disciplinary action. Contractor may request disciplinary action but shall not have authority to initiate or direct disciplinary action against any individual GPA employee; provided, however, that GPA shall use its best efforts to proceed promptly, diligently, and thoroughly to process all requests and take such disciplinary action as requested by Contractor if reasonable under the circumstances, including, but not limited to, the immediate suspension of GPA employees during the notice period of GPA's disciplinary procedures, or placing employee on administrative leave pending adverse action, if their continued presence would interfere with the safe and efficient operation of the CT Power Plants or the safety and health of persons or if the suspension was necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents;
 - 6) GPA and Contractor, upon request, must provide all information relating to employee activities necessary to the management and GPA employees assigned to the CT Power Plants;
 - 7) Contractor has the authority and responsibility to prepare the official performance appraisals for all GPA employees assigned to the CT Power Plants in accordance

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with the established GPA Personnel Rules and Regulations and performance evaluation procedures; and

8) Appropriate implementation of Sections 6.2 through 6.12 of this Agreement.

7.6 Contractor CT Power Plants Management. Contractor shall have the authority to establish work rules, assign and direct the work of the GPA work force, make work schedules, establish safety procedures, prescribe training and approve attendance at training, and any other necessary management actions in performing the requirements of this Contract; provided, however, that Contractor shall act in consultation and coordination with GPA on such matters. Contractor shall have the sole discretion in selecting methods and means to accomplish the refurbishing, operation, and maintenance of the CT Power Plants.

7.7 Assignment to Position. The assignment of GPA employees to the CT Power Plants shall be to a specific position within each CT Power Plants Unit.

7.8 No Termination of Assignment Without Contractor Consent. GPA shall not cause the assignment of any Qualified GPA Employee assigned to CT Power Plants to cease without the consent of Contractor and such consent shall not be unreasonably withheld.

7.9 Contractor may, at any time, with prior written approval from GPA, have Contractor employees or consultants perform functions, duties, and responsibilities at the CT Power Plants as Contractor determines in accordance with the responsibilities of the Contractor.

7.10 Contractor shall cooperate with GPA in GPA's personnel administration under Section 6.10 to the extent that Contractor has a role in the supervisory process.

7.11 Reserved.

SECTION 8 – SUPPLY OF FUEL

8.1 During the term of this agreement, GPA shall at all times supply all fuel necessary for CT Power Plants to generate the electricity for dispatch by GPA.

8.2 The cost of the fuel to be supplied by GPA pursuant to this Section shall be for GPA's account.

8.3 All fuel to be supplied by GPA shall be of the quality and supplied and delivered in the manner described in Schedule G ULSD Fuel Specifications and Arrangements.

8.4 All fuel shall be tested as provided in the Schedule G ULSD Fuel Specifications and Arrangements.

8.5 GPA shall ensure that at all times the necessary stocks of fuel are available for storage at

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the fuel storage tanks of the CT Power Plants.

8.6 The Contractor shall prepare weekly fuel schedules showing anticipated times and quantities of fuel to be utilized by CT Power Plants and GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefor and for all arrangements with the suppliers.

SECTION 9 – DUTIES AND RESPONSIBILITIES OF GPA

9.1 Cooperation. GPA agrees to make its management and staff available to Contractor so that Contractor can provide the services required hereunder.

9.2 Availability of Records. GPA shall take all steps to ensure that documentation required by Contractor for performance of its duties is available to Contractor. GPA will promptly assist Contractor in obtaining such information as is needed by Contractor to perform the services hereunder.

9.3 Responsibility for Transmission Lines. GPA, at its own cost, will be responsible for the maintenance and repair of all the transmission lines and switchgear within the switchyard and on the GPA grid to ensure that at all times they are capable of accepting the energy and capacity provided by CT Power Plants.

9.4 GPA/Contractor Steering Committee. GPA and the Contractor shall organize a Steering Committee, which shall, from time to time, meet and discuss and agree on safety and technical guidelines for the operation of CT Power Plants and for the maintenance, repair and safety/security of the Site. The Contractor shall operate CT Power Plants within such guidelines.

SECTION 10 – COMPENSATION FOR SERVICES

10.1 Payment. GPA shall pay Contractor for costs and services rendered hereunder in accordance with this Agreement. The payment shall be made within 30 days of being invoiced. Should part of the invoice be challenged, GPA will at a minimum pay the unchallenged portions of the invoice under the same terms as above. The CT PMC Contract is planned to be Revenue funded by GPA.

10.2 Contract Price. The Contract Price constitutes the total consideration to be paid by GPA to Contractor for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be

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at its expense without change in the Contract Price. Charges, fees, Contractor's profit, and all other expenses shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive payments. Therefore, the Contract Price is dynamic but bounded.

10.3 Price Adjustment Methods. Any adjustment in contract price pursuant to a clause in this Contract shall be made in one or more of the following ways:

- 1) by agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
- 2) by unit prices specified in the Contract or subsequently agreed upon;
- 3) 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;
- 4) in such other manner as the parties may mutually agree; or
- 5) in the absence of agreement between the parties, by a unilateral determination by GPA of the costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by GPA in accordance with generally accepted accounting principles and applicable sections of the regulations promulgated under Chapter 7 (Cost Principles), subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

10.4 Payment Milestones and Schedule. Payment milestones have been selected to clearly identify the actual status of the portion of the Work completed rather than anticipated project progress schedules. Payments will be based on actual completion of each milestone event, where applicable, and not on the scheduled completion date. When a change in the Agreement is approved, the total contract price will be altered to the new total, and the remaining milestone payments will be adjusted.

Payment Milestones shall not be scheduled more frequently than once every month. GPA will not approve a milestone payment until all preceding milestones have been approved. GPA will make payments within thirty days from receipt and approval of the invoice for the completed milestone.

The payment milestones for monies due to the Contractor from GPA are as follows:

- 1) Annual management fees;
- 2) Reimbursement payments for operations and maintenance related expenditures as agreed to and scheduled between GPA and the Contractor, not to exceed O&M

- budget approved and allocated by GPA;
- 3) Reimbursement payments for capital expenditures or major O&M work and related expenditures as agreed to and scheduled between GPA and the Contractor;
 - 4) Incentive compensation payment; and
 - 5) Compensation payments due to GPA from the Contractor based on Contractor's failure to meet its minimum performance guarantees.

10.4 10.4.1 The cost of management fees under this Agreement shall remain fixed during the term of this Agreement. The total amount of fees includes all travel costs, living allowances, expenses, and all other matters related to the price of this Contract. The total contract price is intended to be all inclusive of costs and expenses related to performance hereunder.

10.5 Contractor shall submit for review by GPA monthly invoices accompanied by a progress report describing the work performed during the compensation period. All payments to Contractor shall be free of any deductions, including but not limited to withholding taxes.

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

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

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

SECTION 11 - TERMINATION

11.1 Order to Stop Work. GPA may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this Contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall

forthwith 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 shall have agreed, GPA shall either:

- 1) Cancel the stop work order; or
- 2) Terminate the work covered by such order, as provided in the "Termination for Default Clause" or the "Termination for Convenience Clause" of this Contract.

11.2 Cancellation of Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the Contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price shall be modified in writing accordingly, if:

- 1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this Contract; and
- 2) The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if GPA 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.

11.3 Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

11.4 Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with Section 10.3, the Price Adjustment Clause of this Contract.

11.5 Termination for Convenience.

11.5.1 Termination. GPA may, when the interest of GPA so requires, terminate this Contract in whole or in part, for the convenience of GPA. GPA shall give written notice of the termination to the Contractor specifying the part of the Contract terminated and when termination becomes effective.

11.5.2 Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle

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the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. GPA may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to GPA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

11.5.3 Rights to Supplies. GPA may require the Contractor to transfer title and deliver to GPA in the manner and to the extent directed by GPA:

- 1) Training material and any completed supplies; and
- 2) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this Contract. The Contractor shall, upon direction of GPA, protect and preserve property in the possession of the Contractor in which GPA has an interest. If GPA does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of Uniform Commercial Code of Guam (UCCG), Title 13 GCA, Section 2706. This Section in no way implies that GPA has breached the Contract by exercise of the Termination for Convenience Clause.

11.5.4 Compensation Under Termination for Convenience. The Contractor shall perform the following for compensation under termination for convenience.

- 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data to the extent required by Section 3118 (Cost or Pricing Data) of the Guam Procurement Regulations bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, GPA may pay the Contractor, if at all, an amount set in accordance with Paragraph 11.5.3 of this section.
- 2) GPA and the Contractor may agree to a settlement provided the Contractor has filed a termination claim supported by cost or pricing data to the extent required by Section 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 GPA, the proceeds of any sales of supplies and manufacturing materials, under Subparagraph 11.5.4 (3) of this Paragraph, and the contract price of the work not terminated.

- 3) Absent complete agreement under Subparagraph 11.5.4 (2) of this Paragraph, GPA shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph 11.5.2 shall not duplicate payments under this Subparagraph:
- a) Contract prices for supplies or services accepted under the Contract;
 - b) 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 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;
 - c) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to Paragraph 11.5.4 of this Section. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
 - d) 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 subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the Contractor under this Subparagraph 11.5.4 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

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supplies and manufacturing materials under Subparagraph 11.5.4 (2) of this Paragraph, and the contract price of work not terminated.

e) Cost claimed, agreed to, or established under Subparagraph 11.5.4 (2) and (3) shall be in accordance with Chapter 7 (Cost Principles) of the Guam Procurement Regulations.

f) All references in the Guam Procurement Regulations to “seller” shall be deemed to refer to Contractor herein.

11.6. Termination for Default.

11.6.1 **Default.** If the Contractor 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, GPA may notify the Contractor in writing of the delay or non-performance and if not corrected in ten days or any longer time specified in writing by GPA, such officer may terminate the Contractor'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 GPA may procure similar supplies or services in a manner and upon terms deemed appropriate by GPA. The Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

11.6.2 **Contractor's Duties.** Notwithstanding termination of the Contract and subject to any directions from GPA, the Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the Contractor in which GPA has an interest.

11.6.3 **Compensation.** Payment for completed supplies delivered and accepted by GPA shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the Contractor and GPA; if the parties fail to agree, GPA shall set an amount subject to the Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations. GPA may withhold from amounts due the Contractor such sums as GPA deems to be necessary to protect GPA against loss because of outstanding liens or claims of former lien holders and to reimburse GPA for

the excess costs incurred in procuring similar goods and services.

11.6.4 Excuse for Non-Performance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor 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 Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified GPA within fifteen (15) days after the cause of the delay and the failure arises out of causes constituting a “force majeure” or “act of god” as defined in Section 18 – FORCE MAJEURE of this Agreement. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the Contractor shall not be deemed to be in default, unless the supplies or services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the Contractor to meet the contract requirements. Upon request of the Contractor, GPA shall ascertain the facts and extent of such failure, and, if GPA 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 Contractor’s progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of GPA under Paragraph 11.5 (“Termination for Convenience”). (As used in this Subparagraph 11.6.4 the term “subcontractor” means subcontractor at any tier.)

11.6.5 Erroneous Termination for Default. If, after notice of termination of the Contractor's right to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of subparagraph 11.6.4 (Excuse for Nonperformance or Delayed Performance), the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such clause.

11.6.6 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.

11.7 Work Product. Upon termination by the Contractor of this Agreement, all briefs, reports, summaries, completed work, and work in progress, and such other information and materials as may have been accumulated by Contractor in performing this Agreement shall, in the manner and to the extent

determined by GPA, become the property of and be delivered to GPA. Contractor may retain a copy of all work that it produces.

11.8 Extension. This Agreement may be extended only upon the written mutual agreement of the parties with such regulatory approval as applicable. The provisions of any such renewal term will be in accordance with the written agreement of the parties.

11.9 No Continuing Obligations. Upon termination of this Agreement, as herein above provided, neither party shall have any further obligation hereunder except for (1) obligations accruing prior to the date of termination, and (2) obligations, promises or covenants which are expressly made to extend beyond the term of this Agreement.

11.10 Bankruptcy. GPA shall have a right to terminate this Agreement if Contractor (including, for purposes of this paragraph, any parent, subsidiary or affiliate thereof): shall file a petition in bankruptcy or shall be adjudicated bankrupt or insolvent, or shall file any petition or answer seeking any reorganization, arrangement, composition, dissolution or similar relief under any law or regulation relating to bankruptcy, insolvency or the rights of creditors generally; shall seek or consent to or acquiesce in the appointment of a trustee for, or a receiver for liquidation of, its business or affairs; shall make an assignment for the benefit of creditors; or there shall be filed against Contractor, its parent company, affiliates, or subsidiaries an involuntary petition in bankruptcy or any proceeding seeking to reorganize, dissolve or liquidate such companies; or if a trustee or receiver shall be appointed for or over the business or property of any of them.

SECTION 12 – RELATIONSHIP OF THE PARTIES

12.1 Personnel of Contractor. Contractor may provide, upon prior written consent of GPA, additional experienced professional personnel, hereinafter referred to as “Employee”, if required during the performance of the services hereunder. Employee shall be under Contractor's sole and exclusive direction and control, and for no purposes shall such Employee be considered an employee of GPA. Contractor shall remain at all times an independent contractor and shall be responsible for and shall promptly pay all federal, state and local taxes chargeable or assessed with respect to Contractor's employees, including, but not limited to, social security, unemployment, federal and state withholding, and other taxes. Contractor shall also be responsible for and pay all compensation and/or any reimbursements due Employee, and no additional amounts shall be due from GPA. GPA may, at its discretion, request that an Employee provided by Contractor be replaced in the event that GPA determines that such Employee lacks the requisite experience or expertise.

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12.2 Duty to Inform Employees. It is Contractor's duty and obligation to inform its Employees of (1) applicable GPA rules and regulations; and (2) the proprietary nature of information and the need to guard its secrecy in accordance with Section 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION.

12.3 Independent Contractor Status. It is expressly understood and agreed that, in the performance of services under this Agreement. Contractor and its personnel/employees shall at all times act as an independent contractor with respect to GPA, and not as an employee or agent of GPA. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant. It being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement.

12.4 Provision of Listing of Personnel/Contractors/Subcontractors. Contractor shall provide GPA with a listing of the name and address of all personnel, contractors or subcontractors utilized by it for this project within seven (7) days of the hiring or engagement of such personnel, contractor or subcontractor by Contractor.

12.5 No Employment Benefits to Contractor, its Employees or Personnel. There shall be no employee benefits to Contractor occurring from this Agreement such as:

- 1) Insurance coverage provided by GPA;
- 2) Participation in the Government of Guam retirement system;
- 3) Accumulation of vacation leave or sick leave.

No person providing services on behalf of Contractor pursuant to this Agreement shall have any claim under this Agreement or otherwise against GPA for salary, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind. Contractor understands and agrees that (1) its employees or personnel who provide services under this Agreement will not be treated as GPA employees for tax purposes, (2) GPA will not withhold on behalf of Contractor's employees or personnel any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement of any governmental body or make available any of the benefits afforded to employees of GPA, and (3) all such payments, withholdings, and benefits, if any, are the sole responsibility of Contractor.

12.6 Payment of Taxes. Contractor will be responsible for paying all taxes applicable to them

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as an independent contractor, including but not limited to GRT, income tax, or any other tax.

12.7 Representation. Contractor and its personnel are not authorized to make representations on behalf of GPA without GPA's express consent.

SECTION 13 – OWNERSHIP OF INFORMATION, DATA AND DOCUMENTS

13.1 Title. Title to, ownership and copyright in all deliverables shall vest in GPA, and such materials shall be delivered to GPA upon completion of the services or upon request of GPA. Contractor shall obtain and/or execute any necessary documents for GPA to perfect or protect such ownership. Any materials retained by Contractor shall be treated in accordance with GPA's Record Retention Policy.

13.2 Previously Created Materials. Ownership of materials previously created by Contractor, which may be used as part of the services, shall continue to be property of Contractor.

13.3 Conveyance to GPA. The entire right, title and interest, including copyright in all deliverables hereunder, shall be transferred to and vested in GPA. The parties expressly agree to consider as works made for hire those works ordered or commissioned by GPA, which qualify as such in accordance with copyright laws. For all such original works, Contractor agrees to provide documentation satisfactory to GPA to ensure the conveyance of all such right, title and interest, including copyright, to GPA.

13.4 Proprietary Rights Indemnification. Contractor warrants that any material furnished by Contractor will not infringe upon or violate any copyright, trade secret or any other proprietary right of any third party.

SECTION 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION

14.1 Protection of Trade Secrets. Contractor and its employees, agents or subcontractors, upon coming into contact with or receiving directly from GPA confidential and/or trade secret information, will be bound by any protective order relating to this information. Contractor and employees will treat all information received by it during the term of this Agreement as strictly confidential and will not disclose such information, in any form, to third parties or internally within Contractor's firm to employees without a need to know such information, without the express written permission of GPA. Confidential information, whether electronically stored or not, must be secured. Contractor will control access to such material and ensure that no breach of confidentiality occurs. Contractor, on receiving requests or orders for information in the form of questions, interrogatories, etc. from non-GPA sources, will advise GPA immediately by person-to-person communication or by telephone, and follow-up by providing copies of such requests.

14.2 Proprietary Information. Any information, whether or not protected by patent or copyright, including, but not limited to, programs, files, specifications, drawings, sketches, models, samples, tools, business information, technical information or other data, written or otherwise (hereinafter "Information"), which has been furnished or disclosed to Contractor shall remain GPA's property and shall be treated by Contractor as being proprietary Information. Information shall not be reproduced, published or disclosed to any third party; or utilized by Contractor for any other purposes without the prior written consent of GPA. All copies of the Information shall be returned to GPA immediately upon request after the conclusion of services; provided, however, that Contractor may maintain the professionally mandated work paper record of its services.

14.3 Previous Information. Contractor shall have no obligation to preserve the proprietary nature of any information, which was previously known to Contractor free of any obligation to keep confidential; or is disclosed to third parties by GPA without restriction; or is or becomes publicly available by other than unauthorized disclosure.

SECTION 15 – ACCESS TO RECORDS AND OTHER REVIEW

Contractor shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its offices at all reasonable times during the contract period and for three (3) years from the date of the final payment under this Agreement for inspection by GPA.

SECTION 16 – INSURANCE

16.1 Insurance Required. Contractor shall not commence work under this Contract until Contractor has obtained all insurance required under this section and GPA has approved such insurance, nor shall the Contractor allow any Subcontractor to commence work on this subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. Contractor shall maintain all insurance required during the course of the work and the period of the PMC.

16.2 Contractors and Subcontractors Insurance. Prior to commencing work, Contractor shall obtain and thereafter maintain during the course of the work insurance with companies acceptable to GPA. The Contractor shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required of the Subcontractor has been so obtained and approved. The limits of insurance shall be as follows unless a higher limit is required by statute:

- 1) General Liability Insurance including products, completed operations and contractual liability coverage in the amount of \$2,000,000 per occurrence and \$2,000,000 aggregate.
 - a) Policy must be primary and non-contributory with endorsements attached;
 - b) GPA shall be named as an Additional Insured;
 - c) Waiver of subrogation shall be in favor of GPA;
 - d) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - e) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

- 2) Commercial Auto Liability Insurance covering third party bodily injury and property damage in the amount of \$1,000,000 combined single limit per occurrence.
 - a) Policy must be primary and non-contributory with endorsements attached;
 - b) GPA shall be named as an Additional Insured;
 - c) Waiver of subrogation shall be in favor of GPA;
 - d) MCS 90 Endorsement – This shall be required for any contracts under the PMC to haul or transport hazardous material, fuel and/or used oil. It is not required at the onset of the PMC contract;
 - e) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - f) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

- 3) Excess Liability Insurance over the General Liability and the Commercial Auto Liability with limits of \$10,000,000 or higher per occurrence/\$10,000,000 aggregate.
 - a) Policy must be primary and non-contributory with endorsements attached;
 - b) Policy must be form following;
 - c) GPA shall be named as an Additional Insured;
 - d) Waiver of subrogation shall be in favor of GPA;
 - e) MCS 90 Endorsement – This shall be required for any contracts under the PMC to haul or transport hazardous material, fuel and/or used oil. It is not required at the onset of the PMC contract;

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- f) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - g) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- 4) Worker's Compensation and Employer's Liability Insurance – Statutory Limits.
- a) Policy must be primary and non-contributory with endorsements attached;
 - b) GPA shall be named as an Additional Insured;
 - c) Waiver of subrogation shall be in favor of GPA;
 - d) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - e) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- 5) Professional Liability Insurance including in the amount of \$1,000,000 each claim.
- a) Policy must be primary and non-contributory with endorsements attached;
 - b) GPA shall be named as a NAMED INSURED;
 - c) GPA shall be named as Loss Payee;
 - d) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - e) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- 6) Contractors All Risk or Builders Risk Insurance – This shall be required for all construction projects and not required at the onset of this PMC contract:
- a) Minimum Limits, deductibles, sub-limits, coverage, and property descriptions per contract or project description;
 - b) Policy must be primary and non-contributory with endorsements attached;
 - c) GPA shall be named as a NAMED INSURED;
 - d) GPA shall be named as a Loss Payee;
 - e) Waiver of subrogation shall be in favor of GPA;
 - f) Cancellation clause of minimum 90 days' prior written notice to GPA; and
 - g) GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

7) General Liability and the Commercial Auto Liability with limits of \$5,000,000 or higher per occurrence – If applicable, fuel/hazardous materials transport which shall be required for any contracts under the PMC to haul or transport hazardous material, fuel and/or used oil. It is not required at the onset of the PMC contract:

- a) Policy must be primary with primary wording endorsement attached;
- b) GPA shall be named as an Additional Insured;
- c) Waiver of subrogation shall be in favor of GPA;
- d) Cancellation clause of minimum 90 days' prior written notice to GPA; and
- e) Policy must have MCS 90 Endorsement.

8) Certificate of insurance must contain the following wording to be acceptable.

All policies must contain the following endorsement and on the Certificate of Insurance:

- a) Cancellation or Material Change Clause of minimum 90 days' prior written notice to GPA. GPA must be given minimum 90 days' prior written notice before any material changes in any policy or cancellation of any policy can take effect. Written notice must be addressed to:

Guam Power Authority
Chief Financial Officer
PO BOX 2977
Hagatna, GU
96932-2977

16.3 Certificate of Insurance. Contractor shall furnish certificates of insurance and waiver of subrogation endorsement to GPA prior to commencement of work showing evidence of such coverage, including the statement to the effect that cancellation or termination of the insurance shall not be effective until at least (10) days after receipt of written notice to GPA. At all times Contractor's insurance shall be primary to any other insurance that may be carried by GPA. The statement of limits of insurance coverage shall be construed as in any way limiting the Contractor's liability under this agreement. GPA shall be

named as insured on all liability coverage and certificates of insurance shall clearly indicate such.

16.4 Insurance Company and Agent. All insurance policies herein required of the Contractor shall be written by a company duly authorized and licensed to do business in Guam and be executed by an agent thereof duly licensed as an agent in Guam.

16.5 GPA Insurance. GPA agrees that it will keep the property and machinery and equipment insured, at a minimum, against loss or damage by fire with extended coverage endorsement for full replacement value as determined by GPA from time to time. Such insurance shall be issued by financially responsible insurers duly authorized to do business in Guam where the property is located and shall contain the standard form of waiver of subrogation. The insurance company shall be required to give GPA not less than ninety days (90) notice in the event of cancellation or material alteration of such coverage. Nothing contained herein shall be construed as creating any liability or responsibility on the part of the Contractor for the adequacy of insurance coverage on the property. As to any insurable risks of loss or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

16.6 Waiver of Subrogation. The parties hereby release each other and their respective officers, employees, and agents from all loss or damage to the property, machinery and equipment and to the fixtures, personal property, equipment and improvements of either GPA or Contractor in or on the Property, notwithstanding that any such loss or damage may be due to or result from the negligence of either of the parties or their respective officers, employees or agents. This waiver does not apply to maintenance and repair assumed under this Contract by the Contractor.

SECTION 17 - INDEMNITY

17.1 Indemnification. Contractor agrees to save and hold harmless GPA, 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 Contractor, Contractor's officers, agents (including subcontractors), servants or employees under this Contract. To the extent permitted by law, GPA and Contractor waive any and all claims against each other for incidental, consequential, special, multiple, and punitive damages arising out of or relating to this Contract. GPA agrees to cooperate, to the extent

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allowed by law, in the submission of claims pursuant to the Government Claims Act against GPA for personal injuries or property damage resulting from the negligent or wrongful act or omission of any GPA employee while acting within the scope of his or her employment, arising out of this Contract.

17.2 Accident or Injury During Travel. GPA assumes no liability for any accident or injury that may occur to Contractor, its agents, dependents or personal property while en route to or from Guam or during any travel mandated by the terms of this Agreement.

SECTION 18 – FORCE MAJEURE

18.1 Force Majeure. Force Majeure referred to herein means an occurrence beyond the control and without the fault or negligence of the party affected including, but not limited to, acts of God or the public enemy, expropriation or confiscation; changes in law procedures, war, rebellion, or riots; floods; unusually severe weather that could not reasonably have been anticipated; fires, explosions, epidemics, catastrophes, or other similar occurrences which are not within the control of the party affected. However, the following shall not be considered as Force Majeure:

- 1) Delay caused by lack of or inability to obtain raw materials, congestion at Contractor's or its subcontractor's facilities or elsewhere, market shortages, or similar occurrences;
- 2) Delay, either on the part of Contractor or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences; or
- 3) Sabotage, strikes, or any other concerted acts of workmen which occur only in the facilities of Contractor or its subcontractors.

Should the circumstances of Force Majeure continue over a period of ninety (90) days, GPA has the right, if no other understanding is reached, to terminate the whole Agreement or any part thereof in accordance with Section 11 - TERMINATION. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefor.

18.2 Invocation of Force Majeure. The party invoking Force Majeure shall perform the following:

- 1) Notify the other party as soon as reasonably possible by facsimile, email, telex, cable or messenger/courier of the nature of Force Majeure, anticipated exposure

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time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the Contract;

- 2) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure; and
- 3) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

18.3 Delivery Time and Force Majeure. Only a Change Order may change contractual Delivery Times. The Contractor shall submit any claim for a Delivery Time extension in accordance with Section 22 – CHANGES and its sub-paragraphs.

The Delivery Time will be extended in an amount equal to time lost due to delays caused by Force Majeure if a claim is made therefor as provided in this Paragraph. No amendment to the contract price, however, shall be allowable because of Force Majeure occurrences. (However, GPA shall pay for reasonable overtime rates and benefits during periods of Force Majeure).

Notwithstanding the foregoing, all time limits stated in the Purchase Order documents are of the essence in the agreement.

SECTION 19 – WARRANTY

19.1 Contractor's obligation to furnish the Goods and Special Services and to perform other services in connection therewith in accordance with the Agreement is absolute, and Contractor warrants and guarantees to GPA that all Goods will be in accordance with the Contract Documents and will be new, fit for the purpose for which they are intended, and free from any defects, including faulty design, materials, or workmanship.

19.2 Contractor shall provide GPA with all warranties and guarantees in writing. GPA and the Contractor shall negotiate the manner in which claims against these warranties are addressed, including any remedies for non-responsiveness. This may include retention of contract amounts, performance bonds, etc.

19.3 Contractor shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods within twelve (12) months from the date on which GPA has placed the Goods in continuous service, or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer period of time as may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract Documents.

19.4 Any part(s) supplied in replacement of the defective part(s) of the Goods or any Goods

repaired pursuant to the provisions of this Paragraph shall be supplied or repaired on the same terms and conditions as provided for herein for the supply of the Goods and in particular a new warranty period shall apply. Such new warranty period shall expire on the date twelve (12) months from the date of such replacement or repair or on the expiration date of the warranty for the original Goods that were replaced or repaired, whichever is later.

19.5 In the event the Contractor furnishes Special Services for installation and startup, such services shall be rendered in a competent and diligent manner and in accordance with the Contract Documents, accepted industry practice and any applicable professional standards.

SECTION 20 – TESTS AND INSPECTIONS

20.1 GPA or its designee shall have the right to inspect or observe the production, inspection, or testing of the Goods at any time and place including the Contractor's facilities and those of its subcontractors where the Goods are being produced.

20.2 Contractor shall conduct, at its own responsibility and expense, all tests and inspections called for by the Contract Documents. In the event that witness inspection by GPA is required under the Contract Documents, the costs and expenses arising therefrom shall be borne by the Contractor, including inspector's fees, transportation, hotel, and general flying expenses. In the event that Contractor's inspection is required at the Site, the costs and expenses arising therefrom shall be borne by the Contractor, including inspector's fees, transportation, hotel, and general flying expenses.

20.3 Any inspection made by GPA and/or its designee will be final. Such inspections or the witnessing of Contractor's test and inspection by GPA and/or its designee shall not relieve Contractor of any of its responsibilities or liabilities under the Contract Documents, nor be interpreted in any way as implying acceptance of the Goods.

SECTION 21 – DEFECTS IN GOODS AND SERVICES

21.1 Remedying Defective Goods. If at any time after GPA's acceptance of delivery and before expiration of the correction period, GPA determines that the Goods are defective, Contractor shall, upon written notice from GPA, do all things necessary, at its expense, to make good the defects as soon as possible after being notified to do so by GPA. Contractor warrants that Contractor, unless otherwise agreed, shall remedy any defects.

It is understood, that if so instructed by GPA, Contractor shall make shipment by the fastest

available method.

In the event that Contractor does not take prompt action to fulfill its obligations hereunder as required by and to the satisfaction of GPA, GPA may, after ten (10) days written notice to Contractor, and without prejudice to any of GPA's rights under the Agreement, accept the defective Goods and carry out the remedial work itself instead of requiring correction or removal and replacement, and charge Contractor for the costs of the work. In an emergency where delay would cause serious risk of loss or damage, GPA may take such action without prior notice to or waiting for action by Contractor.

21.2 Remedying Defective Special Services. If at any time GPA notifies Contractor in writing that any of the Special Services are defective, Contractor shall promptly provide acceptable services. If Contractor fails to do so, GPA may obtain the Special Services elsewhere.

21.3 Cost of Remedying Defects. All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies will be charged against Contractor and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by Contractor to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation for additional professional services required and all costs of repair and replacement of Goods, or property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. Contractor shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GPA of GPA's rights and remedies under this paragraph.

SECTION 22 – CHANGES

22.1 Change Order. By a written order, at any time, and without notice to surety, GPA may, subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:

- 1) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for GPA in accordance therewith;
- 2) Method of shipment or packing; or
- 3) Place of delivery.

GPA may at any time request changes in the services to be performed hereunder.

22.2 Adjustments of Price or Time for Performance. If any such change order increases or decreases the contractor's cost of, or the time required for performance of any part of the work under this

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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 Paragraph 10.3, the Price Adjustment Clause of this Contract. Failure of the parties to agree to an adjustment shall not excuse the contractor from proceeding with the Contract as changed, provided that GPA promptly and duly makes such provisional adjustments in payment or time for performance as may be reasonable. By proceeding with the work, Contractor shall not be deemed to have prejudiced any claim for additional compensation, or an extension of time for completion.

22.3 Time Period for Claim. Within 30 days after receipt of a written change order under Paragraph 22.1, unless GPA extends such period in writing, Contractor shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the Contractor's claim unless GPA is prejudiced by the delay in notification.

22.4 Claims Barred After Final Payment. No claim by Contractor for an adjustment hereunder shall be allowed if notice is not given prior to final payment under this Contract.

22.5 Other Claims not Barred. In the absence of such a change order, nothing in this Section shall be deemed to restrict Contractor's right to pursue a claim arising under the Contract if pursued in accordance with 2 GAR Div. 4, §5106 (8)(1), "Claims Based on [Government's] Actions or Omissions, Notice of Claim Clause", or for breach of contract.

SECTION 23 – SUCCESSORS AND ASSIGNMENTS

This Agreement is binding upon the parties hereto and their respective heirs, successors and assigns. Contractor shall not sell, transfer, pledge, encumber or assign this Agreement or any of the rights, interests or obligations hereunder without the prior written consent of GPA, which consent shall not be unreasonably withheld, conditioned or delayed, except that GPA shall have the right to withhold its consent if, in GPA's reasonable determination, such sale, transfer, pledge, encumbrance or assignment will have a materially adverse effect on the economic interests of GPA. For purposes of this section, any change in ownership of Contractor or its corporate entity shall be deemed an assignment or transfer under this section. "Change in corporate entity" includes any sale or transfer of shares, change in the organization of corporate structure, or alteration of the current ownership and organization of Contractor. Any assignment of this Agreement in violation of the foregoing shall be, at the option of GPA, void.

SECTION 24 – REPRESENTATIVES OF GPA

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The GPA representative, for the purpose of this Agreement, shall be the Assistant General Manager of Operations, or such other person as GPA from time to time may designate in writing. Whenever approval or other authorization, or communication or submission to GPA is required by the terms of this Agreement, such request for approvals, authorizations, communications or submissions, shall be directed to the GPA representative and then executed by the General Manager. However, the Consolidated Commission on Utilities reserves full authority to review or resolve any matter arising hereunder which is within its purview and authority.

SECTION 25 – PERFORMANCE BOND

Contractor shall submit to GPA a performance bond within thirty (30) days after the receipt of the Notice of Contract Award, in the amount of USD _____, payable to GPA in the form of a bond, provided by surety company authorized to do business in Guam, or the equivalent in cash deposited in a local bank approved by GPA, or otherwise supplied in a form satisfactory to GPA and callable upon proper demand. A performance bond is required in order to ensure that Contractor will perform the terms and conditions of the Contract, and that Contractor will provide against direct or indirect damages that may be suffered during the duration of the Contract. The required performance bond shall be in such form that GPA shall approve in its absolute discretion. Failure to furnish a performance bond at the time specified above and in the manner as provided shall be grounds for cancellation of the Contract.

SECTION 26 – DISPUTE RESOLUTION

Disputes. GPA and the Contractor agree to attempt resolution of all controversies which arise under, or are by virtue of, this Contract through mutual agreement. If the controversy is not resolved by mutual agreement, then the controversy shall be decided by GPA in writing within sixty (60) days after the Contractor shall request GPA in writing to issue a final decision. If GPA does not issue a written decision within sixty (60) days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then Contractor may proceed as though GPA had issued a decision adverse to the Contractor.

GPA shall immediately furnish a copy of the decision to the Contractor, by certified mail with a return receipt requested, or by any other method that provides evidence of receipt.

GPA's decision shall be final and conclusive, unless fraudulent or unless the Contractor appeals the decision as follows:

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- 1) For disputes involving money owed by or to GPA under this Contract, the Contractor files appeal of the decision in accordance with the Government Claims Act by filing a government claim with GPA no later than eighteen months after the decision is rendered by GPA or from the date when a decision should have been rendered.
- 2) For all other disputes arising under this Contract, the Contractor files an appeal with the Office of the Public Accountability pursuant to 5 GCA §§ 5706(a) and 5427(e) within sixty days of GPA's decision or from the date the decision should have been made.

The Contractor shall exhaust all administrative remedies before filing an action in the Superior Court of Guam in accordance with applicable laws.

The Contractor shall comply with GPA's decision 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, except where the Contractor claims a material breach of this Contract by GPA. However, if GPA determines in writing that continuation of services under this Contract is essential to the public's health or safety, then the Contractor shall proceed diligently with performance of the Contract notwithstanding any claim of material breach by GPA.

SECTION 27 - MISCELLANEOUS

27.1 No Inducements. Each party to this Agreement acknowledges that no representations, 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 agreement, statement, or promise not contained in this Agreement, shall be valid or binding.

27.2 Modifications. Any modification of this Agreement will be effective only if it is in writing signed by the parties.

27.3 Approval of Commission. For the purpose of this Paragraph and of the entire Agreement, the signature of the Chairman of the Consolidated Commission on Utilities is the only signature that will bind GPA, this includes any amendments to the Contract. GPA shall not be liable to Contractor for any work performed by Contractor prior to the approval of this Agreement by the Consolidated Commission on Utilities and Contractor hereby expressly waives any and all claims for Service performed in expectation of this Agreement prior to its approval by the Consolidated Commission on Utilities.

27.4 Compliance. Contractor shall be required to comply with all Federal and Guam laws, rules, regulations and ordinances applicable to the services provided.

27.5 Notices. All notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given and received (1) when personally delivered, or delivered by same-day courier; or (2) on the fifth business day after mailing by registered or certified mail, postage prepaid, return receipt requested; or (3) upon delivery when sent by prepaid overnight express delivery service (e.g., FedEx, UPS); or (4) when sent by email or facsimile and upon the receipt by the sending party of written confirmation by the receiving party; provided, however, that an automated facsimile or email confirmation of delivery or read receipt shall not constitute such confirmation; and, in any case addressed to a party at the address below, which address may be updated by the party in writing from time to time:

TO CONTRACTOR:

[ADDRESS]

TO Guam Power Authority:

Post Office Box 2977

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Hagatna, Guam 96932

Telephone No.: (671) 648-3225 / (671) 648-3223

Facsimile No.: (671) 648-3290 / (671) 648-3165

27.6 Non-Waiver. GPA shall not consider any provisions of this Agreement waived unless GPA gives notice of such waiver in writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of GPA under the provisions of this Agreement, unless otherwise expressly stipulated therein. Failure of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to insist upon strict performance of any of the terms and conditions hereof, or failure or delay of GPA to exercise any acts, rights, or remedies provided herein or by law shall not relieve Contractor of liability under any guarantees or of obligations under the Agreement and shall not be deemed a waiver of any right of GPA to insist upon strict fulfillment of the Agreement or of any of GPA's rights or remedies as to the Goods or Special Services furnished.

27.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of Guam and all applicable federal laws.

27.8 Invalid Provisions and Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying the intent of this Agreement, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

If any word, phrase, clause, article, or other provision of this Agreement is or is deemed or adjudicated or otherwise found to be against public policy, void, or otherwise unenforceable, then said word, phrase, clause, article, or other provision shall be deleted or modified, in keeping with the express intent of the parties hereto as necessary to render all the remainder of this Agreement valid and enforceable. All such deletions or modifications shall be the minimum necessary to effect the foregoing.

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

27.10 Computation of Time. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the time computation.

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27.11 Language and Trade Terms. All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language.

27.12 Rights and Remedies. The duties and obligations imposed by this Agreement and the rights and remedies available hereunder to the parties hereto will be in addition to, and shall not be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by law or contract, by special warranty or guarantee, or by other provisions of the Contract Documents, and the provisions of this paragraph shall be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply. All representations, warranties, and guarantees made in the Contract Documents will survive final payment and termination or completion of this Agreement.

Any dispute arising under or out of this Contract is subject to the provisions of Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

27.13 New material. Unless this contract specifies otherwise, the Contractor represents that the Goods and components are new. If the Contractor believes that furnishing used or reconditioned Goods or components will be in GPA's interest, the Contractor shall so notify GPA in writing. The Contractor's notice shall include the reasons for the request along with a proposal for any consideration to GPA if GPA authorizes the use of used or reconditioned Goods or components.

27.14 Further Assurances. Each party hereto agrees to do all acts and things to make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

27.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument.

27.16 Survival of Provisions. In order that the Parties may fully exercise their rights and perform their obligations hereunder, such provisions of this Contract that are required to insure such exercise or performance shall survive the termination of this Contract for any cause whatsoever.

27.17 Language Not to be Construed Against the Drafter. No provision in this Contract is to be construed for or against any Party because the Party or its counsel drafted such provision.

27.18 Statement Concerning Ethical Standards. Contractor represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5, Article 11 (Ethics in Public Contracting) of the Guam Procurement Law and in Chapter 11 of the Guam Procurement Regulations.

27.19 Prohibition Against Gratuities, Kickbacks, and Favors. It shall be a breach of ethical standards for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefor. It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontractor or order. Breach of the provisions of this paragraph is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA or other Government of Guam entity.

27.20 Prohibition Against Contingent Fees. Contractor hereby represents that Contractor has not been retained or retained any persons to solicit or secure a contract from GPA upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. Breach of the provisions of this section is, in addition to a breach of this Agreement, a breach of ethical standards, which may result in civil or criminal sanction, debarment or suspension from being a contractor or subcontractor under any other contract with GPA or any other Government of Guam entity.

27.21 Prohibition Against Employment of Sex Offenders. Contractor warrants that no person providing services on behalf of Contractor or 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 convicted of an offense defined in Article 2 of Chapter 28 of Title 9 of the Guam Code Annotated regardless of the jurisdiction in which the conviction was obtained, shall provide services on behalf of Contractor relative to this Agreement. If any person employed by Contractor and providing services under this Agreement is convicted subsequent to the date of this Agreement, then Contractor warrants that it will notify GPA of the conviction within twenty-four hours of being made aware of the conviction, and will immediately remove such convicted person from providing services under this Agreement. If Contractor is found to be in violation of any of the provisions of this paragraph, then GPA shall give Notice to Contractor to take corrective action.

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Contractor shall take corrective action within twenty-four hours of Notice from GPA, and Contractor shall notify GPA when action has been taken. If Contractor fails to take corrective steps within twenty-four hours of Notice from GPA, then GPA in its sole discretion may suspend this Agreement temporarily upon prior written Notice to Contractor until the individual in question is removed from service to GPA.

27.22 Wages and Benefits Determination. Contractor has read and understands the provisions of 5 GCA §5801 and §5802 governing wage and benefits determination. Contractor acknowledges the obligation to pay its employees on Guam who are delivering services to Guam in accordance with the U.S. Department of Labor (DOL) Wages and Benefits Determination as stated in 5 GCA §5801 and §5802. A copy of the most recent U.S. DOL Wages and Benefits Determination for the Guam Region is attached hereto and incorporated by reference to this Contract. Contractor shall apply the Wage and Benefits Determination for Guam promulgated by the U.S. DOL on a date most recent to the renewal date of the Contract in accordance with 5 GCA §5801 and §5802. [ATTACH copy of USDOL document.]

Signatures to follow on the next page.

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

CONTRACTOR

Contractor's Duly Authorized Representative

Date

GUAM POWER AUTHORITY

John M. Benavente, P.E.
General Manager

Date

CERTIFIED AS TO FUNDS AVAILABLE

GPA Certifying Officer

Date

MW APPROVED AS TO FORM 9/16/2025

Marianne Woloschuk
GPA Legal Counsel

Date

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