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Dear Interested Bidder:

Attached herewith please find the **AUTHORITY'S** Invitation for Bids (IFB), GPA-049-09 relative to the supply of **Low Sulfur Diesel Fuel Oil #2** to **GPA's** electric generating power plants: **Fast Tracks, Baseloads, TEMES CT and Tenjo Vista Diesel Generators** to commence on **October 01, 2009** and shall continue until the midnight of **September 30, 2012**. The supply Contract is subject to extension at **GPA's** option to extend the contract for two (2) additional one (1) year terms, renewable annually, with the mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds.

The IFB is divided into two (2) parts:

PART A : The Solicitation (Instructions to Bidders)

PART B : Formal Contract and Bid Offer

These documents must be filled out completely by the bidder and must be submitted to **GPA** in response to this IFB. In addition to these documents, the bidder is required to submit as part of his bid, information pertaining to responsibility and other requirements specified in the solicitation. Failure to do so shall be grounds to declare a bid non-responsive.

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

Sincerely,

**JOAQUIN C. FLORES, P.E.**  
**GENERAL MANAGER**

**ATTACHMENTS:**

# **GUAM POWER AUTHORITY**

## **INVITATION FOR BID**

**GPA-049- 09**

### **TO SUPPLY DIESEL FUEL OIL FOR ELECTRIC POWER GENERATION**

**Fast Track Diesel Generators  
Baseload Plants  
TEMES CT Plant  
Tenjo Vista Diesel Plants**

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# TABLE OF CONTENTS

## **PART A. SOLICITATION**

- I. Summary of Solicitation
- II. Instructions, Procedures and Requirements
- III. Bid Bond
- IV. Performance Bond

## **PART B. CONTRACT DOCUMENTS**

- I. Bid Offer
- II. Fuel Oil Supply Contract

### Preamble

### Article I

- Section 1.01 Fuel Oil to be Supplied
- Section 1.02 Term
- Section 1.03 Contract Price
- Section 1.04 Fuel oil Delivery
- Section 1.05 Terms of Payment
- Section 1.07 Warranty and Claims
- Section 1.08 Price Reduction for Defective Cost or Pricing Data

### Article II

- Section 2.01 Product and Quality
- Section 2.02 Quantity and Quality Assurance
- Section 2.03 Guaranteed Heating Value

### Article II

- Section 3.01 Security
- Section 3.02 Government Laws and Regulations
- Section 3.03 Specifications
- Section 3.04 Permits and Responsibilities
- Section 3.05 Force Majeure
- Section 3.06 Notice to Other Party
- Section 3.07 Payment Required

Section 3.08	Proration or Equitable Allocation
Section 3.09	Alternate Supply
Section 3.10	Resumption of Performance
Section 3.11	Disputes
Section 3.12	Indemnity Contractor
Section 3.13	Transportation
Section 3.14	Safety
Section 3.15	Contractor's Insurance

Article IV

Section 4.01	Failure to Supply
Section 4.02	Failure to Pay
Section 4.03	Failure to Comply with Laws
Section 4.04	Default
Section 4.05	Attorneys Fees
Section 4.06	Termination for Convenience
Section 4.07	Remedies Cumulative

Article V

Section 5.01	Covenant Against Contingent Fees
Section 5.02	Notice
Section 5.03	Interest of Other Parties Contractor
Section 5.04	Assignment
Section 5.05	Time
Section 5.06	Amendment and Waiver
Section 5.07	Descriptive Headings
Section 5.08	Governing Law
Section 5.09	Definitions
Section 5.10	Relationship of Parties
Section 5.11	Number and Gender
Section 5.12	Successors in Interest
Section 5.13	Partial Invalidity
Section 5.14	Equal Opportunity Clause

Article VI

Section 6.01	Binding Effect
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**IV. Company Profile and Statement of Qualification  
(To be provided by interested bidders)**

# **IFB-GPA-049-09**

## **PART A.        THE SOLICITATION**

### **I. BACKGROUND AND SUMMARY OF SOLICITATION**

### **II. INSTRUCTIONS, PROCEDURES, AND REQUIREMENTS**

### **III. PERFORMANCE BOND**

## **I. SUMMARY OF SOLICITATION**

### **1. BACKGROUND.**

The Guam Power Authority ("GPA" or "**AUTHORITY**") of Hagatna, Guam, is a public corporation and an autonomous agency of the Government of Guam. GPA is the sole provider of electric service on the Island of Guam. At the present time, all of the electricity on Guam is produced in various oil-fired plants most of which are owned by **GPA**. GPA's present Diesel Fuel Oil Supply Contract for the following locations: **Fast Tracks, Baseloads, TEMES CT, and Tenjo Vista Diesel Generators**, will expire on **September 30, 2009**, and the **AUTHORITY** desires to initiate the necessary procedures for the solicitation and securing of a new Fuel Oil Supply Contract.

**GPA** is hereby soliciting bids for a Diesel Fuel Oil Supply Contract for about three (3) year term, to provide and deliver the required fuel supply with the first delivery estimated to commence on or about **October 01, 2009** in order to ensure the continuous availability of fuel oil supply for all electric generating power plants. The Authority reserves the right to extend the contract for two (2) additional one (1) year terms, renewable annually, with the mutual agreement of both parties, unless sooner terminated in accordance with the provisions hereof or canceled due to unavailability of funds.

## II: INSTRUCTIONS, PROCEDURES AND REQUIREMENTS FOR BIDDERS.

### 1. TIME AND SCHEDULE.

The deadline for the submission of sealed bids is \_\_\_\_\_, **at 2:00 P.M.** Two (2) copies of the executed Contract and five (5) copies of responsive materials (information pertaining to bidder responsibility) **must** be **received** (not postmarked) by GPA no later than that date and hour. It is advisable to use courier services to expedite delivery of your offer.

### 2. ADDRESS.

Please transmit responsive materials to:

(By Mail)

GUAM POWER AUTHORITY  
P.O. Box 2977  
Hagatna, Guam 96932-2977

**ATTN: Supply Management Administrator**  
TELEPHONE: (671)648-3054/3055  
TELEFAX: (671)648-3165

(By Courier)

GUAM POWER AUTHORITY  
Procurement Office  
Route 16, Harmon  
Dededo, Guam 96912

**ATTN: Supply Management Administrator**  
TELEPHONE: (671)648-3054/3055  
TELEFAX: (671)648-3165

The envelope on lower left corner should be marked “**SEALED BID FUEL OIL SUPPLY, IFB GPA-049-09 OPENING DATE, \_\_\_\_\_, 2009 at 2:00 P.M.**”

### 3. FORM.

All bids must be in writing and must be signed by an officer of the bidder having **AUTHORITY** to bind the company. Offers submitted in response to this solicitation shall be in terms of United States Currency and in the English language. The bids should respond in organized fashion to all the requirements of this Invitation for Bids and should also indicate the bidders lowest price. Bidders must submit along with their bids, the completed and signed Contract, Offer, Bid Bond and information pertaining to the responsibility of Bidder. Failure to submit any of these bid submittal documents shall be grounds to declare a bid non-responsive.

4. **RECEIPTS, REGISTRATION OF BIDS AND CONFIDENTIALITY.**

The sealed bids shall be opened publicly on \_\_\_\_\_, 2009 at 2:00 P.M., in the Guam Power Authority Procurement Conference Room.

For the purposes of this solicitation and bids submitted thereunder, the laws, rules and regulations of Guam concerning confidentiality shall govern. If the Bidder does not want trade secrets or other proprietary data he submitted disclosed to the public or used by the **GPA** for any purpose other than the evaluation of his bid, he shall designate such trade secrets or other proprietary data to be confidential and the title page with the following legend; "This data furnished in connection with our bid for supply of fuel oil shall not be disclosed outside the **GPA** or disclosed in whole or in part or any purpose other than to evaluate the proposal; provided, that if a Contract is awarded to this bidder as a result of, or in connection with the submission of this data, the **GPA** shall have the right to duplicate, use, or disclose the data to the extent provided in the Contract." This restriction does not limit the **GPA's** right to use information contained in the data if it is obtained from another source without restriction. The General Manager of **GPA** or his designee shall examine the bids and determine the validity of any requests for non-disclosure of data as requested by the above legend and he shall take such other action as he is required to by Section 3-202.12.3 of the Guam Procurement Regulations. Bids and modifications shall be time-stamped upon receipt and held in a secure place until the established opening date.

5. **MODIFICATION OR WITHDRAWAL OF BIDS.**

Bids may be modified or withdrawn by written notice received in the office of **GPA** prior to the time and date set for the opening scheduled for \_\_\_\_\_, 2009, at 2:00 P.M.. [There shall be no modifications and/or withdrawals after the opening date of bids].

6. **LATE BIDS, LATE WITHDRAWALS AND LATE MODIFICATIONS.**

Any bid received after the time and date set for receipt of bids is late. Any withdrawal or modification of a bid received after 2:00 P.M., \_\_\_\_\_, 2009, is late. No late bid, late modification, or late bid, late modification, or late withdrawal will be considered.

7. **AWARD.**

Bids will be reviewed and evaluated by **GPA** and will determine the lowest and most responsive bidder for each item (sites) as indicated, and that will be most advantageous to **GPA**. A written Letter of Award (acceptance of offer) mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the offer shall be deemed to result in a binding Contract without further action by either party. **GPA** reserves the right

to waive informalities and minor irregularities in bids received.

A. In the evaluation process, the following factors will be considered (although not necessarily in the order of importance):

- (1) Price and contract cost;
- (2) Whether the bidder's ultimate offer meets and conforms with the announced requirements of **GPA** in all material respects;
- (3) Previous Experience in meeting requirements of a similarly sized or larger contract;
- (4) Financial Strength and
- (5) Overall clarity and presentation of bid and plan to supply fuel to GPA, i.e. how supplier will obtain fuel, how fuel will be delivered to GPA, alternative supply source, etc.;
- (6) Whether the bidder has:
  - (a) the appropriate financial, material, equipment, facility, and personnel resources and expertise, necessary to indicate its capability to meet all Contractual requirements;
  - (b) satisfactory references;
  - (c) qualified legally to Contract with the territory; and

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

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

- (1) inspection or testing of a product prior to award for such characteristics, as quality or workmanship;
- (2) examination of such product as to compatibility, grade, appearance, texture, or
- (3) other examinations to determine whether it conforms with any other purchase description requirements.

8. **BID BOND.**

All bidders shall submit together with all the required submittal documents to GPA a **bid bond** in the amount of equivalent to **FIFTEEN PERCENT (15%) of the total annual cost of the "premium fee" as calculated from the CONTRACT BID PRICE**, made payable to the Guam Power Authority in the form of cash, bank draft, certified check, or by wire transfer to Guam Power Authority, Account No. 0601-00-7247, Bank of Guam, Hagatna, Guam. Unsuccessful bidders will have their bid bonds returned within ten (10) days of the award of Contract. Bid bond will be returned by check unless otherwise agreed to by the Guam Power Authority. The bidder with the successful bid will have bid bond returned within five days of confirmation that a satisfactory performance bond has been received by **GPA**. For the purposes of this solicitation, the bid bond is being required as a form and indication of "good faith" and it is essential to the best interest of the **GPA** in accordance with the procurement laws, rules and regulations of the Government of Guam and the Guam Power Authority. Bidders may also be required to furnish financial statements, credit ratings, or other indicators of their financial viability.

9. **PERFORMANCE BONDS.**

The successful bidder shall submit to the **GPA** a performance bond in the amount of about **FIFTEEN PERCENT (15%) of the total annual cost of the CONTRACT BID PRICE OFFER** and be made payable to the **GPA** in the form of a surety issued by a company with a A.M. Best credit rating of "AA"- or better within fifteen (15) days after a Notice of Award is issued to the successful bidder. For the purposes of this solicitation, the requirement of a performance bond is essential to the best interest of **GPA**. A performance bond is required in order to assure 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 or claimed on account of such delivery of fuel oil supply throughout the term of the Contract. The required performance bond shall be in substantially the same form as that prescribed in Appendix "A" of this Bid Invitation. Any deviation from the prescribed format must be approved by **GPA** in advance. Failure to furnish a performance bond at the time specified above and in the manner as provided shall immediately void the contract.

10. **CANCELLATION OF SOLICITATION; DELAYS.**

**GPA** reserves the right to cancel or to withdraw this Invitation for Bids, to delay determination on this Invitation, to reject all bids or any individual bid in whole or in part, at any time prior to the final award.

In case of cancellation or rejection, bid bonds would be concurrently returned. The reasons for the cancellation, delay or rejection shall be made a part of the procurement file and shall be available for public inspection.

(a) **Rejection of all Bids.**

Prior to the final award, all bids may be rejected in whole or in part when **GPA** determines in writing that such action is in the Guam's best interest for reasons including, but not limited to:

- (1) the supplies and services being procured are no longer required;
- (2) ambiguous or otherwise inadequate specifications were part of the solicitation;
- (3) the solicitation did not provide for consideration of all factors of significance to the territory.
- (4) prices exceed available funds and it would not be appropriate to adjust quantities to come to within available funds;
- (5) all otherwise acceptable bids received are at clearly unreasonable prices;
- (6) there is reason to believe that the bids may not have been independently arrived at in open competition, may have been collusive, and may have been submitted in bad faith.

(b) **Rejection of Individual Bids.**

Any individual bid may be rejected in whole or in part when in the best interest of Guam as determined by **GPA** in its sole discretion. Reasons for rejecting a bid include, but are not limited to:

- (1) the bidder is non-responsive pursuant to Guam's procurement laws, rules and regulations;
- (2) the bid is not responsive as it does not conform in all material respects to the Invitation for Bids;
- (3) the quantity and/or quality of supply or service offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications set forth in the Invitation for Bids or other acceptability criteria set forth in the Invitation for Bids. Upon request, unsuccessful bidders shall be advised of the reasons for rejection;
- (4) the bid is not the lowest responsible bidder which meets the requirements and criteria set forth in the Invitation for Bids;
- (5) the bidder has failed to submit documents relative to the procurement of necessary licenses, permits and authorizations when requested by the Procurement Officer prior to the award.

**III. BID BOND**

**BID BOND**

The Contractor certifies and agrees that the attached Low Sulfur Diesel Fuel Oil Supply Contract was signed by a person(s) duly authorized to enter into a Contract on behalf of our company.

Enclosed herewith is a bid bond submitted in the amount of

United States Dollars made payable to the Guam Power Authority in the form of:

- CASH
- BANK DRAFT
- CERTIFIED CHECK
- WIRE TRANSFER Bank of Hawaii from our Bank

Name of Bank:

Location:

Account Number:

We agree to forfeit said amount in the event of our company's failure to enter into a Contract and furnish performance bond (format as per Attachment A) in the amount of One Million (\$1,000,000) Dollars within fifteen (15) days after a Notice of Award has been issued to our company as the lowest responsible bidder.

We offer and certify, as part of our bid, the information pertaining to responsibility as required by Section II, Paragraph 7 of the Invitation. The information herein provided consist of the

following: (Describe briefly)

See attached letter

The full names and business address of persons and firms interested in the foregoing bid as principals, are as follows:

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For the purposes of the disclosure, a principal is considered as any person or entity owning or entitled to own at least a 5% equity interest in the **CONTRACTOR**.

For any publicly held company listed on a stock exchange, please note the exchange and date initially listed. GPA reserves the right to require additional information regarding any principal as provided in Section 21 of the solicitation.

Respectfully submitted,

(S E A L)

ATTEST: \_\_\_\_\_

BIDDER

WITNESS: \_\_\_\_\_

ADDRESS

Individual trading in own name \_\_\_\_\_

Individual trading under firm name \_\_\_\_\_

Co-partners trading under firm name \_\_\_\_\_

Corporation-State of \_\_\_\_\_

Principal Office Address:

## IV. PERFORMANCE BOND

### PERFORMANCE BOND

**KNOW ALL MEN BY THESE PRESENTS** that \_\_\_\_\_,  
as Principal, hereinafter called **CONTRACTOR**, and \_\_\_\_\_, a  
corporation hereinafter called Surety, are held and firmly bound unto the Guam Power Authority  
as Obligee, in the amount of **FIFTEEN PERCENT (15%) OF THE TOTAL ANNUAL COST of**  
**the BID PRICE OFFER**, and the payment whereof **CONTRACTOR** and Surety bind  
themselves, their heirs, executors, administrators, successors and assigns, jointly and severally,  
firmly by these presents.

WHEREAS, **CONTRACTOR** has by written agreement dated \_\_\_\_\_, 2009  
, entered into a Low Sulfur Diesel Fuel Oil Supply Contract with the Guam Power Authority for  
supply of fuel oil for electric power generation for a **THREE (3) YEAR** term in accordance with  
forms and specifications prepared by **GPA** which Contract is by reference made a part hereof,  
and is hereinafter referred to as the "Contract".

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if  
**CONTRACTOR** shall promptly and faithfully perform said Contract then this obligation shall  
be null and void; otherwise it shall remain in full force and effect. The Surety hereby waives

notice of any alteration or extension provided the same is within the scope of the Contract. Whenever **CONTRACTOR** shall be and is declared by **GPA** to be in default under the Contract, **GPA** having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions; or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by **GPA** and the Surety jointly of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Guam Power Authority and make available as delivery of fuel supply progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of recovery less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph shall mean the total amount payable by **GPA** to **CONTRACTOR** under the Contract and any amendments thereto, less the amount properly paid by **GPA** to **CONTRACTOR**. No right of action shall accrue on this bond to or for the use of any person or corporation other than **GPA** or successors of **GPA**.

Signed and sealed this \_\_\_\_ day of \_\_\_\_\_, 2009.

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**(Principal)**

**(Seal)**

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(WITNESS)

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(TITLE)

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(WITNESS)

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(TITLE)

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(Bonding Company)

**IFB-GPA-049-09**

**PART B : BID SUBMITTAL DOCUMENTS**

**I. BID OFFER**

**II. FUEL OIL SUPPLY CONTRACT**

## **NOTICE**

Please find the Formal Contract. This document as well as others must be filled out and returned to **GPA** as part of your response. Please be also advised of the requirement of furnishing the bid bond in the designated amount and the information pertaining to responsibility and other requirements specified in the Solicitation that must be submitted together with the aforementioned documents. Bidders are not required to submit Part A-the Solicitation Instructions.

**I. BID OFFER.**

OFFER of \_\_\_\_\_ (company) DATED \_\_\_\_\_

TO: GUAM POWER AUTHORITY  
GPA Procurement Office, Route 16  
Harmon, Guam

\_\_\_\_\_, the undersigned do hereby declare that \_\_\_\_\_ have carefully examined Invitation for **Bid IFB-GPA-049-09** and do hereby agree to furnish the supply of diesel fuel oil (fuel quality as referred to Sect. 2.01 Article 2 of the Contract) for electric power generation for a THREE (3) year term, with renewal options, in accordance with the attached Fuel Oil Supply Contract (the “Contract”) terms, conditions and specifications. The Contract price per gallon delivered to Guam Power Authority inclusive of all costs and liabilities incurred prior to delivery for the duration of the Contract is offered as follows:

**BID OFFERS:**

**Required 30-day minimum supply inventory as:**

- (1) Tenjo vista power Plants = **120,000 gallons**
- (2) TEMES, Baseloads, and Fast Tracks = **250,000 gallons**

Item (a) Delivery Site : **Fast Track Generators**

OFFER : (in words) \_\_\_\_\_  
\_\_\_\_\_

(in figures) \$ \_\_\_\_\_ /gal (in three decimal places)

Delivery Method: \_\_\_\_\_

Item (b) Delivery Site: **Baseload Plants**

OFFER : (in words) \_\_\_\_\_  
\_\_\_\_\_

(in figures) \$ \_\_\_\_\_ /gal (in three decimal places)

Delivery Method: \_\_\_\_\_

Item (c) Delivery Site: **TEMES CT Plant**

OFFER : (in words) \_\_\_\_\_  
\_\_\_\_\_

(in figures) \$ \_\_\_\_\_ /gal (in three decimal places)

Delivery Method: \_\_\_\_\_

Item (e) Delivery Site : **Tenjo Vista Diesel Plants**

OFFER : (in words) \_\_\_\_\_  
\_\_\_\_\_

(in figures) \$ \_\_\_\_\_ /gal (in three decimal places)

Delivery Method: \_\_\_\_\_

Respectfully submitted,

\_\_\_\_\_  
(PRINT NAME & Signature)  
BIDDER/ OFFEROR, Duly Authorized  
REPRESENTATIVE OF COMPANY

\_\_\_\_\_  
DATE

ADDRESS:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## II. FUEL OIL SUPPLY CONTRACT

### PREAMBLE

THIS CONTRACT, shall be executed on the date of award, by and between **GUAM POWER AUTHORITY**, a public corporation, hereinafter referred to as "**AUTHORITY**" or "**GPA**", and \_\_\_\_\_, hereinafter referred to as "**CONTRACTOR**":

### W I T N E S S E T H:

#### RECITALS

**WHEREAS**, **AUTHORITY** has issued an Invitation For Bid for a three (3) year supply contract, Invitation For Bid, **GPA-049-09**, for the supply of the **AUTHORITY'S** low sulfur diesel fuel oil requirements to the following locations: **Fast Tracks, Baseloads, TEMES CT Plant, and Tenjo Vista Power Plants.**

**WHEREAS**, **GPA** will award the bid to the lowest responsible bidder whose bid conforms to the material aspects of the Invitation; and

**WHEREAS**, if **CONTRACTOR** specified herein has been awarded the Contract, **AUTHORITY** and **CONTRACTOR** have agreed upon about three (3) year supply Contract that will meet the needs of the **AUTHORITY**;

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

## ARTICLE I

### SECTION 1.01. FUEL OIL TO BE SUPPLIED.

**CONTRACTOR** agrees to furnish and **GPA** agrees to accept and pay for all of **GPA's** diesel fuel oil requirements for power generating plants in Guam for the term of the contract. The estimated total fuel oil requirement (gallons) per year as indicated. The first delivery of fuel oil pursuant to the Contract is anticipated to be on or about October 01, 2009.

<u>PLANT LOCATION</u>	<u>ESTIMATED FUEL OIL REQUIREMENT</u>
(1) <b>Fast Track Diesel Generators</b> (Talofofo and Manengon)	Quantity : 280,000- gallons
(2) <b>Baseload Plants</b> (Cabras, MEC and Tanguisson Plants)	Quantity : 200,000- gallons
(3) <b>TEMES CT / Piti #7 Plant</b>	Quantity : 2,500,000- gallons
(5) <b>Tenjo Vista</b>	Quantity : 1,400,000- gallons

Notwithstanding any estimated quantity set forth herein, the **CONTRACTOR** shall be required to supply all fuel oil, reasonably required by **GPA**.

### SECTION 1.02. TERM.

The Contract Term shall be for three (3) years to commence on October 1, 2009 and shall continue until midnight of September 30, 2012 and with **GPA's** option to extend the contract for two (2) additional one (1) year term, renewable annually, with mutual agreement of both parties with the same terms and conditions as the base term, unless earlier terminated in accordance with the provisions hereof or cancelled due to unavailability of funds.

### SECTION 1.03. CONTRACT PRICE.

The Contract price in U.S. dollars per gallon (\$/gal) for all diesel fuel oil delivered to **GPA** shall be inclusive of all costs and liabilities required to fulfill the contract. The **BID PRICE** is the sum of the **BID REFERENCE PRICE** plus the **FIXED SERVICE FEE**. The price invoiced to the Guam Power Authority shall be adjusted according to the periodic price changes in Platt's Oilgram Spot Price Assessments.

**BID REFERENCE PRICE:**

The bid reference price shall be \$1.543 per U.S. gallon, the average effective price of the Platt's Marketscan Price Assessments for Gas Oil 0.5% S., FOB Singapore cargoes, for January 02, 2009 (Table A).

The Contract price shall increase or decrease on a cent-for-cent basis by the amount per barrel based on Platt's Marketscan Price Assessments, FOB Singapore cargoes for "**Gas Oil 0.5% S.**", (Conversion Factor: 42 gallons per barrel).

**BID OFFERS:**

The BIDDERS shall provide bid offers on a price per gallon basis for all types of deliveries available to the bidder in each Delivery Site, such as by Tanker Truck delivery or Pipeline Delivery. Awarding of the contract will be on a Delivery Site basis.

Item (a) Delivery Site : **Fast Track Generators (Talofoko and Manenggon)**  
OFFER : \$ \_\_\_\_\_ per gallon (in three decimal places)  
Delivery Method: \_\_\_\_\_

Item (b) Delivery Site: **Baseload Plants**  
OFFER : \$ \_\_\_\_\_ per gallon (in three decimal places)  
Delivery Method: \_\_\_\_\_

Item (c) Delivery Site: **TEMES CT Plant**  
OFFER : \$ \_\_\_\_\_ per gallon (in three decimal places)  
Delivery Method: \_\_\_\_\_

Item (d) Delivery Site : **Tenjo Vista Diesel Plants**  
OFFER : \$ \_\_\_\_\_ per gallon (in three decimal places)  
Delivery Method: \_\_\_\_\_

## **INVOICE PRICE DETERMINATION:**

The invoice price for the fuel delivered in any month shall be the average of the posted (high and low) prices reported for Gas Oil 0.5% S *for all of the price postings of the previous month* in the Platt's Marketscan Price Assessment, FOB Singapore cargoes, also referred to as the invoice **Reference Price**, plus the **Fixed Service Fee**.

## **SECTION 1.04. FUEL OIL DELIVERY.**

All fuel requirements must be delivered to the plant sites covered in this contract: **Fast Tracks, Baseloads, TEMES CT, and Tenjo Vista Generators.**

Title to the fuel shall pass from the **CONTRACTOR** to **GPA** when the fuel oil has passed the **GPA** pipeline flange connecting the tanker truck delivery hose and the **GPA** storage tanks. The **CONTRACTOR** shall be available to deliver the fuel to the point of delivery as designated by **GPA** within twenty-four (24) hours notice of receiving a request. **CONTRACTOR** must be available to receive and accept delivery requests during the hours of 7:00 A.M. and 5:00 P.M. daily, including weekends and holidays.

The **CONTRACTOR** shall provide transfer pumps at its delivery trucks and/or whatever else may be necessary to deliver fuel to **GPA** storage tanks to the height of 45 feet. Fuel deliveries shall be on an "on call" basis and shall be during the hours of 7:00 A.M. and 11:00 P.M. daily, including weekends and holidays.

**CONTRACTOR** must exercise its best efforts to deliver fuel to **GPA** to meet operational requirements regardless of the estimates provided by **GPA**.

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

## **SECTION 1.05. TERMS OF PAYMENT.**

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

## **SECTION 1.06. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES.**

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

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

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

Notwithstanding these provisions, should the payment of any such charges described in this section be unduly burdensome to **GPA**, it shall be grounds for re-negotiation for an equitable adjustment in price, pursuant to Section 3.02 herein, without prejudice to the generality of that clause.

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

#### **SECTION 1.07. WARRANTY AND CLAIMS.**

**CONTRACTOR** shall provide both express and implied warranties of merchantability and warrants that the fuel oil shall meet the specifications prescribed herein under Article II and other pertinent sections.

Claims against the **CONTRACTOR** on account of weight, quality, defects in, loss or damage to product shall be given in writing by **GPA** within thirty days (30) from date of delivery of fuel oil as specified in Section 1.04.

If the fuel oil fails to meet the specifications herein, **CONTRACTOR** shall be liable for any direct damages including, but not limited to, compensation and such damages shall not affect other remedies provided for in the Contract, procurement laws, rules and regulations.

#### **SECTION 1.08. PRICE REDUCTION FOR DEFECTIVE COST OR PRICING DATA.**

Should it be determined at any time during the Contract term that the data submitted as part of the bid made by **CONTRACTOR** or subsequent pricing were inaccurate, incomplete, or non-current, then Contract price or prices shall be adjusted to exclude any sums by which it shall be determined by **GPA** that such price or prices were increased as a result of such inaccurate, incomplete or non-current data.

TABLE A. BID REFERENCE PRICE DOCUMENT

www.platts.com

# Asia-Pacific/Arab Gulf Marketscan

January 06, 2009

**Singapore**

	<b>FOB Singapore</b>	<b>MOPS strip</b>	<b>Premium/discount</b>
Gasoline 97 unleaded	+55.92 - 55.96+		+14.90/14.94+
Gasoline 95 unleaded	+50.31 - 50.35+		+9.30/9.34+
Gasoline 92 unleaded		+47.29 - 47.33+	6.27/6.31
Gasoline 92 unleaded		+46.28/46.32+	0.99/1.03
Naphtha	+41.37 - 41.41+	+41.00 - 41.04+	
Spot naphtha	+40.80 - 40.84+		+ -0.25/-0.15+
Kerosene	+65.60 - 65.64+	+66.33 - 66.37+	+ -0.75/-0.71+
Gasoil 10 ppm	+68.34 - 68.38+		3.58/3.62 *
Gasoil 50 ppm	+67.79 - 67.83+		3.03/3.07 *
Gasoil 0.05% sulfur	+66.19 - 66.23+		+1.43/1.47+ *
Gasoil 0.25% sulfur	+65.59 - 65.63+		+0.83/0.87+ *
<b>Gasoil Reg 0.5% sulfur (\$/bbl)</b>	<b>+64.79 - 64.83+</b>	<b>+64.74 - 64.78+</b>	+0.03/0.07+
BioDiesel (\$/mt)	+600.00 - 600.50+		
Demurrage Clean (\$)	25500.00		
MTBE (\$/mt)	+501.00 - 503.00+		
Fuel oil 180 CST 2% (\$/mt)	+263.98 - 264.02+		
HSFO 180 CST (\$/mt)	+253.98 - 254.02+	+251.98 - 252.02+	+1.98/2.02+
HSFO 380 CST (\$/mt)	+246.99 - 247.03+	+243.39 - 243.43+	+3.58/3.62+
Demurrage Dirty (\$)	-27000.00		
Ex-Wharf 180 CST	+270.50 - 271.50+		
Ex-Wharf 380 CST	+262.50 - 263.50+		
LSWR Mixed/Cracked	+35.68 - 35.72+		-1.12/-1.08 **

Spread to FOB Singapore naphtha; \* Differential to FOB Singapore Gasoil Reg 0.5%; \*\* Assessment is FOB Indonesia. Diff to Pertamina mixed-cracked formula

**Singapore paper**

	<b>Balance Jan *</b>	<b>Feb</b>	<b>Mar</b>
Naphtha	+41.43/41.47+	+40.28/40.32+	+39.48/39.52+
Reforming spread -	4.83/4.87 - 5.98/6.02		-7.18/7.22
Naphtha Japan	NA/NA	374.75/375.25	372.25/372.75
Mogas 92 unl	+46.28/46.32+	+46.28/46.32+	+46.68/46.72+
Kero	+65.97/66.01+	+66.92/66.96+	+68.12/68.16+
Gasoil Reg 0.5%	+64.93/64.97+	+64.43/64.47+	+64.98/65.02+
HSFO 180 CST	+252.73/252.77+	+250.73/250.77+	+254.23/254.27+
HSFO 380 CST	+244.33/244.37+	+241.83/241.87+	+245.33/245.37+

\* Bal Month swaps will be assessed from the 1st till 15th of the month, in February from 1st till 14th of the month.

**Arab Gulf / Japan**

	<b>FOB Arab Gulf</b>	<b>Premium/discount^</b>	<b>C+F Japan</b>
Gasoline unleaded			+49.41 - 49.45+
Gasoline 95 RON unleaded *	+47.88 - 47.92+	+3.89 - 3.93+	+52.43 - 52.47+
		+4.96 - 5.00+ **	
Naphtha LR2 (\$/mt)	+354.63 - 360.13+		+379.25 - 384.75+
Naphtha (\$/mt)	+351.73 - 357.23+	11.50/12.50	372.25 - 372.75
Naphtha MOPJ Strip		9.00/10.00	+390.75 - 391.25+
Naphtha 2nd 1/2 Feb (\$/mt)			+384.25 - 384.75+
Naphtha 1st 1/2 Mar (\$/mt)			+379.25 - 379.75+
Naphtha 2nd 1/2 Mar (\$/mt)			+67.43 - 67.47+
Kerosene	+63.51 - 63.55+	+2.18/2.22+	
Kerosene LR2	+63.89 - 63.93+		
Gasoil 0.05% sulfur	+67.08 - 67.12+ -	6.48/6.52-	
Gasoil 0.25% sulfur	+63.38 - 63.42+	2.78/2.82	
Gasoil	+62.58 - 62.62+	1.98/2.02	+68.20 - 68.24+^^
Gasoil LR2	+62.98 - 63.02+		

**ARTICLE II**

**SECTION 2.01. PRODUCT AND QUALITY.**

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in the following tables:

**FUEL SPECIFICATION: PRODUCT: DIESEL FUEL Oil No. 2**

<b>Characteristics</b>	<b>Specification Limits for Fuel Deliveries to Fast Tracks, Baseloads, TEMES CT</b>	<b>Specification Limits for Fuel Deliveries to Tenjo Vista Diesel Plant</b>	<b>Test Method</b>
Gravity, <a href="#">API @ 60</a> deg F	32-42	32-42	D- 1298
Flash Point, PMCC, deg. F.	140 Min.	140 Min.	D- 93
Sulfur Content, Wt. %	<b>0.50 Max.</b>	<b>0.30 Max.</b>	D- 129
Appearance, @ Ambient Temp	Clear & Bright	Clear & Bright	Visual
Pour Point, Deg. F.	50 Max.	59 Max.	D- 97
Cetane Index No. (calculated)	47 Min.	47 Min.	D- 976
Water & Sediments, By centrifuge, Vol %	0.050 Max.	0.050 Max.	D- 1798
Carbon Residue, 10% Bottom, Wt. %	0.200 Max.	0.200 Max.	D- 189
Corrosion, Copper strip, 3 hrs @ 212 deg. F.	ASTM No.1 Max.	ASTM No.1 Max.	D- 130
Ash Content, Wt. %	0.01 Max.	0.01 Max.	D- 482
Neutralization No., Total Acid No., mg KOH/gm sample	0.200 Max.	0.200 Max.	D- 974
Color, ASTM Color	2.0 Max.	2.0 Max.	D-15000
Guaranteed Heating Value, MMBTU/bbl.	5.700 <b>Min.</b>	5.700	D- 240
Metals, Ppm	Report	Report	Baird AE

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

Test Methods shall be in conformance with the prescribed procedures set forth by the American Society For Testing and Materials (ASTM) Standards for Petroleum Products, Lubricants, and Fossil Fuels. Alternate test method shall be subject to GPA's approval.

### **SECTION 2.02. QUANTITY AND QUALITY ASSURANCE.**

**GPA's** fuel storage tank receiving meter shall be utilized to determine the quantity of fuel received by **GPA**. Quantity shall be based on received volume corrected to standard sixty degrees Fahrenheit (60 °F). Conversion to be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B.

In the event that GPA's meter is not available, **CONTRACTOR'S** tanker truck or loading rack meters shall be utilized to determine the quantity of fuel received by **GPA**. Initial and final meter readings shall be machine-stamped on the delivery tickets and must be acknowledged by the authorized receiving facility representative.

**CONTRACTOR** shall have its meters calibrated no less than annually starting at the commencement of the contract period and **CONTRACTOR** shall furnish GPA a copy of the certificate of calibration no later than 5 days after the scheduled calibration due date.

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

Delivery tanker truck compartments and valves must be properly sealed as a condition of acceptance for delivery. Seal numbers shall be indicated on the delivery ticket with the initials of the supplier dispatch officer. Deliveries with tampered seals shall be rejected.

Appropriate Certificate of Quality Reports (COQ) shall also accompany each delivery. Quality must comply with the quality requirements specified under Section 2.01 as a condition for acceptance of delivery.

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

### **SECTION 2.03. GUARANTEED HEATING VALUE.**

If the heating value of the fuel oil delivered by **CONTRACTOR** is less than specified in Section 2.01, **CONTRACTOR** shall furnish and deliver without charge an additional quantity of fuel oil necessary to make the total BTU supplied equal to the heating value of the total quantity first delivered (in barrels) times the heating value specified in Section 2.01.

### ARTICLE III

#### SECTION 3.01. SECURITY.

Contractor is required to maintain a minimum of thirty (30) days inventory at the Contractor's own storage facility as follows:

Tenjo Vista = 120,000 gallons

Baseloads, TEMES, and Fast tracks = 250,000 gallons

For security of supply in the event of severe typhoon or other calamities, Contractor shall prioritize delivery to GPA and guarantee uninterrupted supply of fuel up to approximately 1,000,000 gallons during the recovery period.

**CONTRACTOR** reserves the right to supply fuel oil meeting **GPA** specifications from any lawful source. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in Section 1.03.

#### SECTION 3.02. GOVERNMENT LAWS AND REGULATIONS.

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

in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

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

### **SECTION 3.03. SPECIFICATIONS.**

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

### **SECTION 3.04. PERMITS AND RESPONSIBILITIES.**

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

### **SECTION 3.05. FORCE MAJEURE.**

No failure or omission to carry out or to observe any of the terms, provisions or conditions of the Contract shall give rise to any claim by one party against the other, or be deemed to be a breach of the Contract if the same shall be cause by or arise out of:

- (a) War, etc.  
War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;
- (b) Restraints.  
Arrest or restraint of princes, rulers or peoples;
- (c) Confiscation.  
Expropriation, requisition, confiscation or nationalization;

- (d) Rationing.  
Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental **AUTHORITY** or person purporting to act therefor;
- (e) Regulations.  
Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;
- (f) Acts of God.  
Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;
- (g) Loss for Tankers.  
Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;
- (h) Accidents.  
Accidents to or adjuncts of shipping navigation;
- (i) Strikes.  
Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;
- (j) Explosions.  
Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;
- (k) Taking by Government.  
Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;
- (l) Mechanical Breakdown.  
Unavailability of **GPA's** electric generating plant and any, or all, appurtenances thereto, including transmission and distribution facilities, due to any mechanical failure, inability to operate as designed, emergency outages of equipment or facilities for the purpose of making repairs to avoid breakdown thereof or damage thereto other than regularly scheduled repairs or regular maintenance; or

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

This section does not relieve the **CONTRACTOR** of providing adequate insurance coverage for the protection of **GPA**.

**SECTION 3.06. NOTICE TO OTHER PARTY.**

Either party whose obligations may be affected by any of the forces or causes set out in Section 3.05, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible after the occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and to resume performance at the earliest practicable time.

**SECTION 3.07. PAYMENT REQUIRED.**

Notwithstanding the provisions of Section 3.05, supra, **GPA** shall not be relieved of any obligation to make payments for any fuel delivered to **GPA** tanks hereunder, however, during the force majeure condition the obligation shall be suspended, except for fuel oil deliveries made prior to the force majeure condition.

**SECTION 3.08. PRORATION OR EQUITABLE ALLOCATION.**

If any of the events enumerated in Section 3.05, supra, have occurred, **CONTRACTOR** shall prorate or otherwise allocate in a fair and equitable manner among its customers, including **GPA**, the supplies of fuel oil **CONTRACTOR** has available for delivery at the time of the occurrence or for the duration of such event taking into account **GPA**'s unique situation as Guam's total dependence on fuel oil.

**SECTION 3.09. ALTERNATE SUPPLY.**

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any negligence on part of the Contractor, **GPA** may at its sole discretion seek an alternative source of fuel oil. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 1.03, the **CONTRACTOR** shall be liable to **GPA** for the difference.

**SECTION 3.10. RESUMPTION OF PERFORMANCE.**

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of Section 3.05, supra, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in Section 3.05, supra, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

### **SECTION 3.11. DISPUTES.**

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

### **SECTION 3.12. INDEMNITY.**

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

### **SECTION 3.13. TRANSPORTATION.**

**CONTRACTOR**' and **GPA**'s rights and duties under Section 3.13 and 3.14 do not supersede or control the provisions of Section 3.05 Force Majeure.

### **SECTION 3.14: SAFETY.**

The Contractor recognizes the concern of **GPA** that no lube oil product or related materials or substances provided under this contract shall in any way jeopardize the health or safety of **GPA** employees. In order to fully protect the safety of **GPA** employees, the Contractor shall, prior to providing any oil product or related materials or substances to **GPA** hereunder, certify in writing to **GPA** that the oil product and any other material or matter to be provided to **GPA**, does not contain any "hazardous materials", "hazardous substances" or "toxic substances". For purposes of this section, the foregoing quoted terms shall have those meanings defined in

applicable federal or local statutes, which may include, but is not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the Clean Air Act, the Clean Water Act, the Hazardous Materials Transportation Act, the Occupational Safety and Health Act, and the Toxic Substances Control Act.

Prior to the delivery of any oil or other product or material, the Contractor shall provide GPA with the Material Safety Data Sheet (MSDS). GPA seeks to ensure that the Contractor will not use or cause to deliver hazardous, dangerous or toxic oil products or other materials which would require GPA to provide special personnel protective equipment or gear for its employees.

**SECTION 3.15: CONTRACTOR’S INSURANCE.**

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

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

**C. COMMERCIAL GENERAL LIABILITY:**

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

- (a) Bodily Injury Limits: \$ 1,000,000 Each Person
- (b) Property Damage Limits: \$ 1,000,000 Each Occurrence  
\$ 2,000,000 Aggregate

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

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

**D. AUTOMOBILE LIABILITY INSURANCE:**

The Contractor shall take out and maintain during the life of the Contract, such Automobile Liability insurance as shall protect him against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for him in any capacity in connection with the carrying out of this Contract. GPA shall be an additional insured on Auto Liability policy. Contractor will grant Waiver of Subrogation in favor of GPA. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

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

**E. POLLUTION LIABILITY INSURANCE:**

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

**F. EXCESS LIABILITY**

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

**G. CERTIFICATE OF INSURANCE:**

The Contractor shall furnish GPA with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs B, C, D, E, and F above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage

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

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

#### **H. SUBCONTRACTOR'S INSURANCE:**

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

#### **I. INSURANCE COMPANY AND AGENT:**

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

#### **J. INDEMNITY:**

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

#### **K. OIL SPILL RESPONSIBILITIES:**

The Contractor shall be responsible for any and all oil spills caused by or as a result of the performance of diesel engine cylinder lubrication oil deliveries. The Contractor shall recover or remove, or cleanup as appropriate, any diesel engine cylinder lubrication oil spilled by the contractor, its agents or assigns upon the performance of this Contract. Clean-up operations shall commence immediately within twelve (12) hours and be completed within a reasonable time. In the event the Contractor fails to complete the clean-up operations within reasonable time, GPA may conduct such clean up and the Contractor shall reimburse the Authority for any and all costs reasonably incurred for the clean-up operations. All clean-up operations shall be in accordance with applicable Federal or Territorial laws, rules and regulations, and will only be acceptable upon the approval of Guam EPA.

In the event of an oil spill, the Contractor shall immediately notify GPA and Guam EPA authorities, and said Contractor shall immediately initiate clean up and continue such clean up until completion.

## ARTICLE IV

### SECTION 4.01: FAILURE TO SUPPLY.

(a) Should Contractor fail to perform any of the terms, provisions or conditions of this Contract, the contractor shall be in default of the Contract agreement. In this event, GPA will provide a written notice to the Contractor of such default, and provide the contractor an opportunity to cure the default within thirty (30) calendar days after the notice of default. GPA, during this period, in its discretion and in accordance with whatever action, reserves the right to secure similar diesel engine cylinder lubrication oil from other sources; in such event, the contractor shall be responsible for any costs, expenses, fees, and monetary amounts of any nature whatsoever, including but not limited to diesel engine cylinder lubrication oil handling fees, administrative, labor, and operations costs, and all other amounts associated with or related to the securing of such diesel engine cylinder lubrication oil supply by the Authority.

(b) Should the Contractor fail to cure such default within thirty (30) calendar days after the notice of default thereof, GPA may terminate the Contract in whole or in part. In the event that GPA terminates the Contract by default, then the provisions of the performance bond shall be in effect.

### SECTION 4.02. FAILURE TO PAY.

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

- (a) terminate the Contract effective thirty (30) days after receipt by **GPA** of written notice if not first cured; or
- (b) continue to supply fuel oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

### SECTION 4.03. FAILURE TO COMPLY WITH LAWS.

In the event the **CONTRACTOR** or any person or entity identified as principals in the offer submitted in connection with the bid shall be found by any court or administrative agency having jurisdiction over the subject matter of the violation, to have violated any law, rule or regulation in connection with **CONTRACTOR**'s performance of the obligations under the Contract in any manner whatsoever directly or indirectly which violation shall constitute a breach of the peace, or an act involving moral turpitude or otherwise constitute endangerment of the health, safety and welfare of the citizens of the Territory of Guam, **GPA** may at its sole discretion terminate this Contract upon 30 days written notice.

#### **SECTION 4.04. DEFAULT.**

(a) Default.

In addition to default under the provision of Section 4.01, if the **CONTRACTOR** refuses or fails to perform any of the provisions of this contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach of this contract, **GPA** may notify the **CONTRACTOR** in writing of the delay or non-performance and if not cured within thirty (30) days of the date of notification, **GPA** may terminate the contract in whole or such part or parts of the contract as to which there has been a delay or a failure to properly perform. However, in any event, and without the necessity of first issuing a Notice of Default, **GPA** may obtain an alternate source of fuel oil if **CONTRACTOR** fails to fully deliver any shipment of fuel oil within 15 days of the scheduled delivery date specified in the final notice. In the event of termination in whole or in part, **GPA** may procure fuel oil supply from another source whenever it deems appropriate. 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 fuel oil supply.

(b) Compensation.

**GPA** shall pay for fuel oil delivered to GPA and shall be obliged to accept delivery of, and pay for, cargo in transit to GPA provided such cargo is received at the time of receipt of **GPA's** notice of termination for default.

(c) 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 Section 3.05 relating to Force Majeure of this Contract, the rights and obligations of the parties shall be the same as if the notice of termination for convenience had been issued pursuant to Section 4.05.

(d) Additional Rights and Remedies.

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

#### **SECTION 4.05. ATTORNEYS FEES.**

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

**SECTION 4.06. TERMINATION FOR CONVENIENCE.**

(a) **Termination.**

The delivery of fuel oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part, whenever **GPA** shall determine that such termination is in the best interest of **GPA**, or whenever **GPA** because of technological developments ceases to use Diesel Fuel Oil, as described in the specifications contained in Section 2.01, as the principal source for power generation.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated, and the Contract shall be terminated effective sixty (60) days after receipt of notice by **CONTRACTOR**.

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

The **CONTRACTOR** shall incur no further obligations in connection with the terminated fuel oil supply delivery and on the date set in the Notice of Termination the **CONTRACTOR** will stop delivery of fuel oil to the extent specified. The **CONTRACTOR** shall also terminate outstanding orders and contracts, if any, as they relate to the terminated Contract for fuel oil supply. The **CONTRACTOR** shall settle the liabilities and claims arising out of the termination of orders and contracts, if any, connected with the terminated fuel oil supply delivery. The **CONTRACTOR** must still deliver fuel oil supply not terminated by the Notice of Termination and may incur obligations as are necessary to do so.

(c) **Compensation.**

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

under subparagraph (2) shall not duplicate payments under this subparagraph:

- (i) fuel oil Contract prices for supplies or services accepted under the Contract by **GPA**;
- (ii) costs incurred in preparing to perform and performing the terminated portion of the delivery of fuel oil plus a fair and reasonable profit on such portion of the delivery (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted fuel oil supplies or services; provided, however, that if it appears that the **CONTRACTOR** would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- (iii) costs of settling and paying claims arising out of the termination of Contracts or orders pursuant to paragraph (2) of this clause. These costs must not include costs paid in accordance with subparagraph (3)(ii) of this paragraph;
- (iv) the reasonable settlement costs of the **CONTRACTOR** including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of contracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the **CONTRACTOR** under this subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the **CONTRACTOR** reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under the Uniform Commercial clause.

**SECTION 4.07. REMEDIES CUMULATIVE.**

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

**ARTICLE V**

**SECTION 5.01. COVENANT AGAINST CONTINGENT FEES.**

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

**SECTION 5.02. NOTICE.**

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

General Manager  
Guam Power Authority  
Post Office Box 2977  
Hagatna, Guam 96932  
TELEFAX: (671) 648-3224

**CONTRACTOR:**

Address: \_\_\_\_\_

\_\_\_\_\_

Telefax: \_\_\_\_\_

**SECTION 5.03. INTEREST OF OTHER PARTIES.**

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

**SECTION 5.04. ASSIGNMENT.**

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

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

**SECTION 5.05. TIME.**

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

**SECTION 5.06. AMENDMENT AND WAIVER.**

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

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

**SECTION 5.07. DESCRIPTIVE HEADINGS.**

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

**SECTION 5.08. GOVERNING LAW.**

This Contract is made under, and shall be governed and construed in accordance with, the laws, statutes and regulations of the Territory of Guam, to the exclusion of all other legal systems. Wherever a term defined by the Uniform Commercial Code is used in the Contract the definition

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

#### **SECTION 5.09. DEFINITIONS.**

- (a) "Barrel" shall mean 42 gallons.
- (b) "Day" and "month" mean a calendar day and month respectively.
- (c) "Fuel oil" means a liquid hydrocarbon product satisfying the specifications in Section 2.01, supra.
- (d) "Gallon". As used in the Contract, "gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.
- (e) "Receiving facility" means the **Fast Tracks, Baseloads, TEMES CT, and Tenjo Vista, Power Generating Units.**
- (f) "Ton" means a metric ton of 2204.62 English pounds.
- (g) "\$" refers to United States Dollars.

#### **SECTION 5.10. RELATIONSHIP OF PARTIES.**

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

**SECTION 5.11. NUMBER AND GENDER.**

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

**SECTION 5.12. SUCCESSORS IN INTEREST.**

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

**SECTION 5.13. PARTIAL INVALIDITY.**

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

**SECTION 5.14. EQUAL OPPORTUNITY CLAUSE.**

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

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

**ARTICLE VI**

**SECTION 6.01. BINDING EFFECT.**

This contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the contract in response to the IFB **GPA-049-09** This contract is subject to the approval of **GPA** and the Public Utilities Commission and it shall not be binding on part of **GPA** until such approval is made as evidenced by the signatories below.

\_\_\_\_\_  
Joaquin C. Flores, P.E. General Manager  
GUAM POWER AUTHORITY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Simon A. Sanchez II, Chairman  
Consolidated Commission on Utilities

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CONTRACTOR, DULY AUTHORIZED  
REPRESENTATIVE OF COMPANY

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
LEGAL COUNSEL, GUAM POWER AUTHORITY