

CONTRACT

LG CNS AMERICA, INC.

GUAM POWER AUTHORITY

2017

SECTION 1. PURPOSE AND SCOPE OF SERVICES	3
SECTION 2. CONDITIONS PRECEDENT	5
SECTION 3. CONTRACT DOCUMENTS	5
SECTION 4. CONTRACT TERM	6
SECTION 5. COMPENSATION FOR SERVICES	6
SECTION 6. OPERATION OF THIS CONTRACT	8
SECTION 7. PROTECTION OF WORK AND PROPERTY	8
SECTION 8. DEFECTIVE WORK.....	8
SECTION 9. DEFAULT	9
SECTION 10. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES	9
SECTION 11. SUBCONTRACTS	9
SECTION 12. ASSIGNMENT OF AGREEMENT	10
SECTION 13. EQUAL OPPORTUNITY	10
SECTION 14. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS	11
SECTION 15. RESTRICTION AGAINST CONTRACTORS EMPLOYING CONVICTED SEX OFFENDERS FROM WORKING AT GOVERNMENT OF GUAM VENUES	11
SECTION 16. CLAIMS AND DISPUTES	11
SECTION 17. TERMINATION FOR CONVENIENCE	11
SECTION 18. SURRENDER OF PREMISES	11
SECTION 19. FAILURE TO COMPLY WITH LAWS	12
SECTION 20. AMENDMENT AND WAIVER	12
SECTION 21. GOVERNING LAW	12
SECTION 22. RELATIONSHIP OF PARTIES	12
SECTION 23. NOTICE TO OTHER PARTY	12
SECTION 24. ATTORNEY'S FEES AND COSTS.....	13
SECTION 25. CONTRACT BINDING EFFECT.....	13
SECTION 26. AMENDED TERMS AND CONDITIONS FROM IFB DOCUMENTS.....	13
SECTION 27. O&M SCOPE OF WORK	15

FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the 15TH day of MAY, 2017 by and between:

LG CNS AMERICA, INC., hereinafter referred to as CONTRACTOR, duly organized, licensed, registered and qualified to do business in Guam with its principal address at 920 SYLVAN AVENUE ENGLEWOOD CLIFFS, NJ 07632.

and

Guam Power Authority, hereinafter referred to as the "Authority" or "GPA", a Public Corporation with its office located at Gloria B. Nelson Public Service Building, 688 Route 15, Mangilao, Guam 96913;

RECITALS

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

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

WHEREAS, CONTRACTOR submitted a bid proposal to design, construct and provide O&M services for the Energy Storage System Phase I project; and

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

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

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

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

SECTION 1. PURPOSE AND SCOPE OF SERVICES

1.1 Purpose

CONTRACTOR agrees to provide all the services as required under the Contract Documents and GPA agrees to pay for all the services rendered, in the amounts shown in the table below plus any and all sums

to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, to design and construct the Energy Storage System Phase I project on or about 365 Calendar Days after NTP.

CONTRACTOR agrees to provide O&M services as required under the Contract Documents and GPA agrees to pay for all the services rendered, in the amounts shown in the table below plus any and all sums to be added and/or deducted resulting from all extra and/or omitted work in connection therewith, to provide O&M services for the Energy Storage System Phase I project for a period of 25 years after commissioning.

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

1.2 Scope of Services

CONTRACTOR agrees to furnish all the necessary labor, supplies and materials, machinery, equipment, facilities, tools and services necessary or proper to perform and complete in a workmanlike manner all the work required for the design, construction and O&M services for the Energy Storage System Phase I project as required under the Contract Documents and herein. CONTRACTOR shall observe, comply with

and be subject to all terms, conditions, requirements, and limitations of the Contract Documents and shall carry on the Contract to the satisfaction of GPA.

SECTION 2. CONDITIONS PRECEDENT

2.1 CONTRACTOR's Submittals

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

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

2.2 GPA's Submittals

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

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

SECTION 3. CONTRACT DOCUMENTS

3.1 Documents Included

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

- A. This Contract and Amendments to the Contract
- B. Amendments to Multi-Step Bid No.: GPA-082-15
- C. Multi-Step Bid No.: GPA-082-15
- D. CONTRACTOR's Proposals for Multi-Step Bid No.: GPA-082-15
- E. The Performance Bond
- F. Affidavit of Disclosure of Major Shareholders
- G. Audited financial information on CONTRACTOR's firm and all subcontractors that will be used in the project (if applicable)
- H. Certificate of Good Standing to conduct business in jurisdiction of residence
- I. Non-collusion Affidavit
- J. Declaration Regarding Compliance with DOL Wage Determination
- K. No Gratuities or Kickback
- L. Ethical Standards Affidavit

- M. Restriction against Contractors Employing Sex Offenders from Working at Government of Guam Venues
- N. Bid Bond
- O. A current Guam Business License. Although it is not required in order to provide a bid for this engagement, obtaining a Guam Business License is a pre-condition for entering into a contract with the Authority.
- P. O&M Scope of Work

3.2 Discrepancies

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

3.3 Presumption of Familiarity

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

SECTION 4. CONTRACT TERM

4.1 Term

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for three hundred sixty-five calendar (365) days after NTP on MAY 15, 2017 and shall continue until the midnight of MAY 14, 2018.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years after commissioning on MAY 15, 2018 and shall continue until the midnight of MAY 14, 2043.

The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years after commissioning on MAY 15, 2018 and shall continue until the midnight of MAY 14, 2038.

SECTION 5. COMPENSATION FOR SERVICES

5.1 Schedule of Values

Within three days after receipt of notice to proceed, the CONTRACTOR shall submit for approval a schedule of the estimated values of the main branches of the work totaling the amount of the contract.

The format to be used will be furnished by the Contracting Officer. These values will be used for determining partial payments and as a basis for changes in work as outlined in the General Conditions.

5.2 Payment

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

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

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

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

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

5.3 Release of Claims

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

5.4 Certificate of Completion

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

5.5 Total Amounts Paid to CONTRACTOR

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

5.6 Final Payment

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

5.7 Guam Gross Receipts Tax

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

SECTION 6. OPERATION OF THIS CONTRACT

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

SECTION 7. PROTECTION OF WORK AND PROPERTY

CONTRACTOR shall at all times safely guard GPA's property from injury or loss in connection with this contract. He shall at all times safely guard and protect his own work and that of adjacent property (as provided by law and the contract documents) from damage. All passageways, guard fences, lights and other facilities required for protection by laws and regulations and local conditions must be provided and maintained.

SECTION 8. DEFECTIVE WORK

No work or material which may be defective in construction or quality or deficient in any of the requirements of the drawings and specifications will be considered accepted as a consequence of the

failure of GPA to discover or to point out said defects or deficiencies during the construction; nor will the presence of inspectors on the work relieve CONTRACTOR from the responsibility of securing the quality and progress of work as required by these specifications.

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

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

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

SECTION 9. DEFAULT

In the event either party of this Contract fails to perform any of the provisions of this Contract, the other party must notify the party in default in writing of the deficiency or non-performance. The party in default has forty-five (45) calendar days in which to remedy such default. If such default is not cured within forty-five (45) calendar days, the other party may terminate all or part of the Contract. Events of default include but are not limited to the following:

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

SECTION 10. LICENSES, PERMITS, TAXES, AND RESPONSIBILITIES

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

SECTION 11. SUBCONTRACTS

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

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

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

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

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

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

SECTION 12. ASSIGNMENT OF AGREEMENT

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

SECTION 13. EQUAL OPPORTUNITY

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

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

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

SECTION 14. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS

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

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

GCA 5 §5253(b) restricts the CONTRACTOR against employing convicted sex offenders from working at Government of Guam venues. It states:

(b) All contracts for services to agencies listed herein shall include the following provisions: (1) warranties that no person providing services on behalf of the contractor has been convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA, or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry; and (2) that if any person providing services on behalf of the contractor is convicted of a sex offense under the provisions of Chapter 25 of Title 9 GCA or an offense as defined in Article 2 of Chapter 28, Title 9 GCA or an offense in another jurisdiction with, at a minimum, the same elements as such offenses, or who is listed on the Sex Offender Registry, that such person will be immediately removed from working at said agency and that the administrator of said agency be informed of such within twenty-four (24) hours of such conviction.

SECTION 16. CLAIMS AND DISPUTES

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

SECTION 17. TERMINATION FOR CONVENIENCE

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

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

SECTION 18. SURRENDER OF PREMISES

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

SECTION 19. FAILURE TO COMPLY WITH LAWS

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

SECTION 20. AMENDMENT AND WAIVER

Neither the Contract nor any provision hereof may be changed, waived, altered, amended, discharged or terminated orally, but only by an instrument in writing signed by the party against whom enforcement of the change, waiver, alteration, amendment, discharge or termination is sought.

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

SECTION 21. GOVERNING LAW

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

The parties expressly submit to the jurisdiction of the Superior Court of Guam, for the resolution of any dispute or difference or claims between the parties in connection with the Contract, and to service of process by registered mail. Judgment upon any award rendered by the Superior Court of Guam may be entered in any court of any country having jurisdiction, and such award shall be binding upon the parties. CONTRACTOR waives all rights against GPA to claim consequential, special or punitive damages.

SECTION 22. RELATIONSHIP OF PARTIES

Nothing contained in the Contract as awarded to the successful bidder shall be deemed or construed by the parties or by any third person to create the relationship of principal and agent or of partnership or of joint venture or of any association between CONTRACTOR and GPA, and no provisions contained in the Contract nor any acts of the parties shall be deemed to create any relationship between GPA and CONTRACTOR, other than the relationship of supplier of services and beneficiary.

SECTION 23. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in the preceding section, supra, shall promptly notify the other party in writing, giving full particulars thereof as soon as

possible after such occurrence of such force or cause. Such party shall exercise due diligence to remove such cause with all reasonable dispatch and shall exert every efforts to resume performance at the earliest practicable time.

SECTION 24. ATTORNEY'S FEES AND COSTS

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

SECTION 25. CONTRACT BINDING EFFECT

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

SECTION 26. AMENDED TERMS AND CONDITIONS FROM IFB DOCUMENTS

The following sections of the Terms and Conditions supersede the corresponding Terms and Conditions from the Invitation for Bid documents:

Volume I, 2.14.2 Performance Bond Form, Amount, and Duration

A construction period performance bond shall be required from winning Bidders in the form as prescribed in Appendix F in the amount equal to ONE HUNDRED PERCENT (100%) of the contract price as security for the faithful performance and proper fulfillment of the contract. A performance bond is required in order to assure that CONTRACTOR will perform the terms and conditions of the CONTRACT, and that CONTRACTOR will save GPA harmless on account of all claims for damage to persons, property or premises arising out of his/her operations prior to the acceptance of the finished work; and that he/she will promptly make payments to all persons supplying him/her labor, materials, supplies and services used directly or indirectly by CONTRACTOR in the prosecution of the work provided for in the CONTRACT.

A warranty period performance bond shall be required from winning Bidders in the form as prescribed in Appendix F in the amount equal to \$4,138,394.00 as security for the proper fulfillment of the performance guarantees specified in Volume II throughout the 20-year warranty period. Receipt by GPA of the warranty period performance bond shall be a prerequisite for release of the construction period performance bond.

If the Bidder is declared by GPA to be in default under the CONTRACT, GPA may exercise any or all rights and remedies it possesses under the provisions of the performance bonds.

Volume I, 4.14.3 Time Period for Claim

Within 45 days after receipt of a written change order under Paragraph 4.14.1 Change Order, unless the Procurement Officer extends such period in writing or e-mail, The CONTRACTOR shall file notice of intent to assert a claim for an adjustment. Later notification shall not bar the CONTRACTOR's claim unless the Territory is prejudiced by the delay in notification.

Volume I, 4.28 Time and Completion and Liquidated Damages

The CONTRACTOR must agree to fully complete the basic work under the Contract Agreement within three hundred sixty-five (365) calendar days from the issuance of Notice to Proceed (NTP). The CONTRACTOR must also agree to pay to GPA the amount of four thousand dollars (\$4,000.00) per calendar day, not to exceed FIFTEEN PERCENT (15%) of the contract price, not as a penalty, but as reasonable liquidated damages for failing, neglecting or refusing the work within the time specified.

Should GPA choose to award the additive bid, the CONTRACTOR must agree to fully complete the work under the Contract Agreement within the negotiated time frame after the issuance of the Notice to Proceed (NTP). The CONTRACTOR must also agree to pay to GPA the amount of four thousand dollars (\$4,000.00) per calendar day, not to exceed FIFTEEN PERCENT (15%) of the contract price, not as a penalty, but as reasonable liquidated damages for failing, neglecting or refusing the work within the time specified.

The CONTRACTOR shall not be charged with liquidated damages when the delay in completion of the work is due:

- a) To any preference, priority or allocation order duly issued by the Guam Power Authority.
- b) To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to acts of God or the public enemy, acts of the Guam Power Authority, acts or another contractor in the performance of a contract with the Guam Power Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.
- c) To any delays of Subcontractors or suppliers occasioned by any of the causes specified in subsections (a) and (b) of this article.

The CONTRACTOR shall, within seven (7) calendar days from the beginning of delay give written notice as to the causes of the delay to the Contracting Officer, who will ascertain the facts and extent of the delay and notify the CONTRACTOR within reasonable time of his decision in the matter.

The CONTRACTOR shall note that Guam by nature has frequent rainfall causing suspension of work. Said suspensions shall not qualify for time extensions unless the weather is unusually severe.

Volume I, 4.28.2 Suspension of Work

The OWNER will furnish all land and rights-of-way necessary for the carrying out of this contract and the completion of the work herein contemplated. Should the OWNER be prevented or enjoined from proceeding with the work or from authorizing its prosecution, either before or after the commencement by reason of any litigation, the CONTRACTOR shall not be entitled to make or assert any claim for damage by reason of said delay, or to withdraw from the contract except by consent of the OWNER, but time for completion of the work will be extended to such time as the OWNER determines will compensate for the time lost by such delay determination to be set

forth in writing. The OWNER guarantees that the CONTRACTOR shall be allowed to enter and perform work within the specified land and rights-of-way necessary for the carrying out of this contract.

SECTION 27. O&M SCOPE OF WORK

1. Owner	Guam Power Authority (" <u>GPA</u> ")
2. Contractor	LG CNS America, Inc. (" <u>Contractor</u> ")
3. Project	a 24 MW Energy Storage System at the GPA Agana Substation compound and a 16 MW Energy Storage System at the GPA Talofofo Substation compound (the " <u>Project</u> ")
4. Work	<p>Contractor shall perform the following work (collectively, the "<u>Work</u>"):</p> <p>The work related to operation, maintenance and management of the Project (which includes, without limitation, the works listed below; the "<u>O&M Work</u>"):</p> <ul style="list-style-type: none"> - The scheduled maintenance work, monitoring work and warranty management work; - Emergency service work (collectively with the above, the "<u>Scheduled Maintenance Work</u>"); - Repairs, improvements, replacements and other works other than the Scheduled Maintenance Work and other than as otherwise expressly contemplated hereunder (the "<u>Unscheduled Maintenance Work</u>"); - Maintaining the O&M manual and obtaining Owner's approval (to the extent not otherwise provided under the Contract); - Submission of daily reports, monthly reports and semi-annual "inspection result" reports; - Creation and storage of operation and maintenance records (including electronic records) and Project performance monitoring; - Storage and management of all spare parts, replacement parts, consumable parts; - Preparing of annual maintenance plan and obtaining Owner's prior approval; - Supervision and acceptance inspection of all deliveries,

	<p>replacements, repairs, warranties, and tests and verification by equipment suppliers etc. (the "<u>Service Providers</u>");</p> <ul style="list-style-type: none"> - Responses or reports to related agencies, electric utility, and local related parties that are necessary for performing the Work and operating the Project; - Obtain and maintain permits, authorizations and licenses that must be obtained in the name of Contractor for the performance of the Work; - Compliance with the provisions of the Project agreements specified in the Contract and otherwise affecting the operation, repair and maintenance of the Project, as well as the requirements under the applicable permits; - Promptly notifying or reporting to Owner regarding events and accidents at or affecting the Project; - Handling of complaints filed against Owner regarding the operation and maintenance of the Project; - Periodic testing and reporting of the results of the ESS performance ratio to Owner under the Contract and remedial actions required by Contractor; - All work that is related to or is necessary under applicable laws and regulations and applicable permits in association with each of the above. - All work related to the O&M services as required in the GPA-082-15 bid documents.
5. Maintenance Support System	Contractor shall secure the necessary and appropriate personnel and organization for performing the Work and shall maintain a system that enables Contractor to commence any repairs in case an event requiring the repairs occurs within the response times set forth in the Contract.
6. Environmental, Health and Safety Manual	Contractor shall prepare an environment, health, and safety manual indicating the protocols for performing the Work safely and in accordance with the applicable laws and regulations and applicable permits, submit it to Owner no later than [30] days prior to the Commencement Date and obtain approval of Owner.
7. Hazardous Substances	Contractor shall not use or bring into the site of the Project (the " <u>Site</u> ") any "Hazardous Materials" (as defined in the Contract) except as set forth in the Contract consistent with "Good Industry Practice" and applicable laws and permits. Contractor shall comply with applicable

	laws and regulations and permits when disposing "Hazardous Materials" or using "Hazardous Materials" in furtherance of performing its obligations under the Contract.
8. Inspection by Owner	Owner may conduct inspections on or off the Site with respect to the performance of the Work as necessary, including any testing of the Work following any warranty work. In case Owner reasonably determines that the performance of the Work by Contractor does not meet the applicable performance standards, Contractor shall implement necessary measures to bring such Work in compliance with the Contract.
9. Subcontracts	<p>In case Contractor subcontracts a part of the work to subcontractors, it shall notify Owner and obtain its prior written approval.</p> <p>All Work to be performed by subcontractors shall be subject to, and performed in compliance with, the requirements of the Contract to the same extent as if Contractor were performing such Work.</p> <p>Contractor shall be responsible for, and supervise, all aspects of the Work, including any part performed by such subcontractors. Contractor shall expedite Work of subcontractors.</p>
10. ESS Performance Report	From the date when the "Performance Guarantee" (as defined in the Contract) under the Contract, Contractor shall report the results of the ESS performance test defined in the Contract.
11. Training for Transition of Services	During the last one month of the Term (in the case of an expiration of the Contract) or for a period of 30 days, in the case of an earlier termination of the Contract, Contractor shall provide training and transition services to the Owner to enable the Owner to continue to perform the operation and maintenance services for the Project in accordance with the terms of the Contract and "Good Industry Practice".

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

CONTRACTOR:

LG CNS AMERICA, INC.

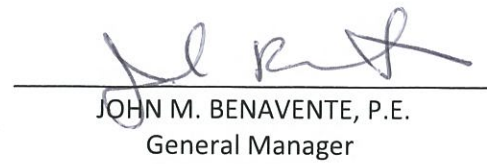


GILHO CHOI
President

Date: MAY 15, 2017

OWNER:

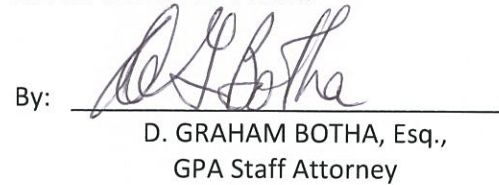
GUAM POWER AUTHORITY



JOHN M. BENAVENTE, P.E.
General Manager

Date: MAY 15, 2017

APPROVED AS TO FORM:

By: 

D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney

**AMENDMENT NO. I TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.**

This AMENDMENT NO. I ("AMENDMENT") is entered into on MAY 15, 2018 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
920 Sylvan Avenue
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, the following scope of work has been added to the design and construction portion of the project:

1. Relocation of the existing 115 kV outdoor circuit breaker, H401, to accommodate the addition of the new breaker, H405, to the ring bus configuration at the Agana Substation
 - a. Additional interconnection design
 - b. Removal and relocation of H401 and associated equipment and structures
 - c. Civil work for relocation of pavement and swale
2. GE Hydran and fault indicator for 115 kV transformer at the Agana Substation
3. Protection panel at the Talofofo Substation
4. Additional SEL 735 meters
5. Additional fencing and ground mesh extension at the Agana Substation

WHEREAS, the following scope of work has been deleted from the design and construction portion of the project:

1. Owner-furnished auxiliary transformers (2 ea.)

WHEREAS, the net total design and construction cost has increased by \$735,219.39 to a new total of \$35,734,289.39; and

WHEREAS, the additional scope of work requires an extension of the CONSTRUCTION completion date to September 30, 2018, an extension of the O&M SERVICES completion date to September 30, 2043, and an extension of the 20-year warranty to September 30, 2038.

AMENDMENT TO THE CONTRACT

NOW, THEREFORE, GPA and CONTRACTOR for the considerations set forth, agree to amend the CONTRACT as follows:

1. Replace the table in Section 1.1 Purpose with the following:

	24 MW Agana	16 MW Talofofo	Total
Design & Construction	\$16,799,554.00	\$18,199,516.00	\$34,999,070.00
Amendment I Scope			\$735,219.39
Fixed O&M Annual Fee			
Year 1	\$108,520	\$108,520	\$217,040
Year 2	\$111,259	\$111,259	\$222,518
Year 3	\$114,075	\$114,075	\$228,150
Year 4	\$116,969	\$116,969	\$233,938
Year 5	\$119,943	\$119,943	\$239,886
Year 6	\$123,000	\$123,000	\$246,000
Year 7	\$126,143	\$126,143	\$252,286
Year 8	\$129,373	\$129,373	\$258,746
Year 9	\$132,693	\$132,693	\$265,386
Year 10	\$136,106	\$136,106	\$272,212
Year 11	\$139,615	\$139,615	\$279,230
Year 12	\$143,222	\$143,222	\$286,444
Year 13	\$146,931	\$146,931	\$293,862
Year 14	\$150,744	\$150,744	\$301,488
Year 15	\$154,663	\$154,663	\$309,326
Year 16	\$158,694	\$158,694	\$317,388
Year 17	\$162,837	\$162,837	\$325,674
Year 18	\$167,098	\$167,098	\$334,196
Year 19	\$171,479	\$171,479	\$342,958
Year 20	\$175,984	\$175,984	\$351,968
Year 21	\$180,617	\$180,617	\$361,234
Year 22	\$185,380	\$185,380	\$370,760
Year 23	\$190,279	\$190,279	\$380,558
Year 24	\$195,316	\$195,316	\$390,632
Year 25	\$200,498	\$200,499	\$400,997

2. Replace Section 4.1 Term with the following:

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for five hundred four calendar (504) days after NTP on MAY 15, 2017 and shall continue until the midnight of SEPTEMBER 30, 2018.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years after commissioning on OCTOBER 1, 2018 and shall continue until the midnight of SEPTEMBER 30, 2043.


The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years after commissioning on OCTOBER 1, 2018 and shall continue until the midnight of SEPTEMBER 30, 2038.

All other terms and conditions of the CONTRACT shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT effective this day of May 15, 2018.

CONTRACTOR:

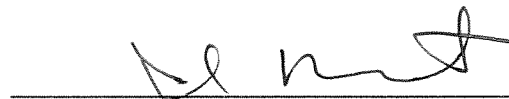
LG CNS AMERICA, INC.



GILHO CHOI
President


OWNER:

GUAM POWER AUTHORITY




JOHN M. BENAVENTE, P.E.
General Manager

APPROVED AS TO FORM:

By: 

D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney

AMENDMENT NO. II TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.

11/1/18
Received
Hyunjoon Tae


This AMENDMENT NO. II is entered into on OCTOBER 1, 2018 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
920 Sylvan Avenue
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, CONTRACT AMENDMENT NO. I extended the design and construction completion date to September 30, 2018 and increased the total design and construction contract amount to \$35,734,289.39 for additional scope of work; and

WHEREAS, due to circumstances identified in EXHIBIT A, GPA and CONTRACTOR have agreed to further extend the design and construction completion date to December 31, 2018, the O&M services completion date to December 31, 2043, and the 20-year warranty expiration date to December 31, 2038.

AMENDMENT TO THE CONTRACT

NOW, THEREFORE, GPA and CONTRACTOR for the considerations set forth, agree to amend the CONTRACT as follows:

1. Replace Section 4.1 Term with the following:

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for five hundred ninety-six calendar (596) days after NTP on MAY 15, 2017 and shall continue until the midnight of DECEMBER 31, 2018.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years after commissioning on JANUARY 1, 2019 and shall continue until the midnight of DECEMBER 31, 2043.

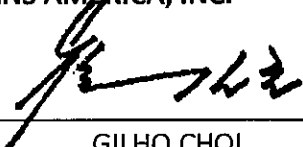
The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years after commissioning on JANUARY 1, 2019 and shall continue until the midnight of DECEMBER 31, 2038.

All other terms and conditions of the CONTRACT and CONTRACT AMENDMENT NO. I shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT NO. II effective this day of October 1, 2018.

CONTRACTOR:


LG CNS AMERICA, INC.



GILHO CHOI
President

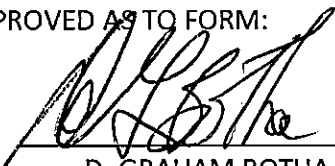
OWNER:

GUAM POWER AUTHORITY



JOHN M. BENAVENTE, P.E.
General Manager

APPROVED AS TO FORM:

By: 

D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney



EXHIBIT A



Change Proposal

Timeline Extension Proposal 'LGCNS-GPAESS1-180827-CP002'

Document Number : LGCNS-GPAESS1-180827-CP002

LG CNS America, Inc.,
920 Sylvan Avenue, Englewood Cliffs, New Jersey 07632
August 27, 2018

To: John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977 Hagatna, Guam 96932
Tel: (671) 648-3101

Dear Mr. John M. Benavente;

This is with regard to the contract, C-082-15, signed between GPA and LG CNS on May 15, 2017 and the amendment I, OP 24006, extended the delivery date from May 14, 2018 to September 30, 2018.

We would like to have a change in the contract regarding the schedule. The summarized justification is as mentioned in below and detailed information in the attachments. We would like to ask for your close review on the below and attached information and to let us know if you have any questions.

Justification

1. For the integrity and completeness of design, both LG CNS and GPA have spent considerable time and effort for this project to move forward in the right direction. LG CNS submitted pre-final design on July 19, 2018 for GPA to review and sign the building permit which is the most important milestone of the project. For the detailed information, please refer to the attachment #1. **(Calendar Days of Delays are 39 days)**
2. The following shows LG CNS' good faith efforts to meet the project Deadlines and recover the delays experienced in item 1. LG CNS could start construction after completing the design, but in order to meet the project's deadline, LG CNS chose to have design and construction being done in parallel. Construction was started on November 15, 2017. LG CNS acknowledged that by doing design and construction together would cost LG CNS more. However, if we started construction after the completed final design, project would been delayed to the mid-2019.
3. Unfortunately, the July 19, 2018 building permit milestone meant that several key construction items would have to be performed during the Guam rainy season. Heavy rains experienced during the construction period severely impacted our project schedule. For example, before concrete pouring, we need to do enough compaction to get tested for a right soil density. However, heavy shower ruined the compacted area which moved back our schedule. This led us to cancel the scheduled soil density test, pump out a puddle and dump out the compacted soil



to do compaction work again. For the detailed information, please refer to the attachment #2.
(Calendar Days of Delays are 53 days)

Thus, LG requests schedule extension of approximately **92 more calendar days** from the project finish date of September 30, 2018 to complete the project. We expect that the change is to be made at the earliest and we will ensure this change will be in line as indicated. We really appreciate your understanding for the inconvenience caused to you.

Thank you.

Sincerely,

Hyunjoon Tae

Project Manager



Attachment #1:

Days of Delays for the integrity and completeness of design

Below table is days of delays in the Design phase when comparing Amendment I (OP 24006) delivery schedule until 9/30/2018 and proposed delivery schedule until 12/31/2018.

Amendment I (OP 24006) delivery schedule until 9/30/2018				Proposed delivery schedule until 12/31/2018			Days of Delays (B-A)
Tasks	Duration	Start	Finish (A)	Duration	Start	Finish (B)	
Design	285 d	Tue 17-05-16	Tue 18-06-19	347 d	Tue 17-05-16	Mon 18-09-17	91
Preliminary Design (35%)	46 d	Tue 17-05-16	Fri 17-06-30	46 d	Tue 17-05-16	Fri 17-06-30	
Construction Site Survey and Surface Investigation	57 d	Tue 17-07-11	Wed 17-09-27	57 d	Tue 17-07-11	Wed 17-09-27	
Site Survey(Land Survey)	12 d	Tue 17-07-11	Wed 17-07-26	12 d	Tue 17-07-11	Wed 17-07-26	
Surface Inverstigation(Geotechnical Soils Survey)	48 d	Mon 17-07-24	Wed 17-09-27	48 d	Mon 17-07-24	Wed 17-09-27	
60% Design	60 d	Mon 17-06-05	Fri 17-08-25	60 d	Mon 17-06-05	Fri 17-08-25	0
60% Design Submission to GPA	45 d	Mon 17-06-05	Fri 17-08-04	45 d	Mon 17-06-05	Fri 17-08-04	
60% Design Review and Approval(from GPA)	22 d	Fri 17-08-04	Fri 17-08-25	22 d	Fri 17-08-04	Fri 17-08-25	
Apply and Approve for C&G Permit to DPW	38 d	Tue 17-09-05	Thu 17-10-26	38 d	Tue 17-09-05	Thu 17-10-26	
90% Design	81 d	Fri 17-08-25	Fri 17-12-15	81 d	Fri 17-08-25	Fri 17-12-15	0
90% Design Submission to GPA	12 d	Fri 17-08-25	Tue 17-09-05	12 d	Fri 17-08-25	Tue 17-09-05	
90% Design Review and Approval(from GPA)	2 d	Tue 17-09-05	Fri 17-12-15	2 d	Tue 17-09-05	Fri 17-12-15	
100% Design	96 d	Mon 17-12-18	Mon 18-04-30	124 d	Mon 17-12-18	Fri 18-06-08	40
100% Design Submission to GPA	86 d	Mon 17-12-18	Mon 18-04-16	86 d	Mon 17-12-18	Mon 18-04-16	
100% Design Review and Approval	10 d	Tue 18-04-17	Mon 18-04-30	38 d	Tue 18-04-17	Fri 18-06-08	
GPA Ground Mesh Clearance	70 d	Mon 17-12-11	Fri 18-03-16	70 d	Mon 17-12-11	Fri 18-03-16	
Pre-Final Design	20 d	Tue 18-05-01	Tue 18-05-29	49 d	Mon 18-06-11	Fri 18-08-17	81
Pre-Final Design Submission to GPA	10 d	Tue 18-05-01	Mon 18-05-14	28 d	Mon 18-06-11	Thu 18-07-19	
Pre-Final Design Review and Approval	10 d	Tue 18-05-15	Tue 18-05-29	21 d	Fri 18-07-20	Fri 18-08-17	
Process DPW Building Permit	5 d	Tue 18-05-01	Mon 18-05-07	5 d	Mon 18-08-20	Fri 18-08-24	
Final Design	15 d	Wed 18-05-30	Tue 18-06-19	20 d	Mon 18-08-20	Mon 18-09-17	91

Total days of Design Delays are 91 calendar days and approximately 39 more calendar days of them have affected overall project schedule delays.

Attachment #2:

Days of Delays due to heavy rains

No.	Date/Site	Description of Delays	Days of Delay
1)	May 1, 2018 at Talofofo	2 hours heavy rain in the morning → Stop Work(1day) + additional work such as water pumping, surface arrangement, clearing and re-do work, etc. (1day)	2.0
2)	May 2, 2018 at Talofofo	Overnight rain → No Work(1day) + additional work(1day)	2.0
3)	May 18, 2018 at Talofofo	2 times heavy rain → Delayed Work(0.5day) + additional work(1day)	1.5
4)	June 8, 2018 at Talofofo	heavy rain afternoon → Early Finish(0.5day) + additional work(1day)	1.5
5)	June 20, 2018 at Talofofo	Overnight rain & heavy rain afternoon → Delayed Work(0.5day) + additional work(1day)	1.5
6)	June 27, 2018 at Talofofo	Overnight rain & heavy rain → Delayed Work(0.5day) + additional work(1day)	1.5
7)	June 29, 2018 at Talofofo	Overnight rain → Pump out work(0.5day)	0.5
8)	July 5, 2018 at Talofofo	Tropical Storm → No Work(1day) + additional work(2days)	3.0
9)	July 9, 2018 at Talofofo	Overnight rain → Pump out work(0.5day)	0.5
10)	July 12, 2018 at Talofofo	Overnight rain → Pump out work(0.5day)	0.5
11)	July 16, 2018 at Talofofo	Overnight rain & heavy rain → Delayed Work(0.5day) + additional work(0.5day)	1.0
12)	July 19, 2018 at Talofofo	Afternoon heavy rain → Early Finish(0.5day) + additional work(1day)	1.5
		Compaction works were delayed for below period due to heavy rain - Subbase: 6/19-6/21, 6/27-29 (6days) - Base course: 7/5-7/9, 7/11-7/17, 7/20-7/23 (16days)	22.0
Working Days of Construction Delays at Talofofo			39.0
Calendar Days of Construction Delays at Talofofo			53.0
13)	May 2, 2018 at Agana	Overnight rain → No Work(1day) + additional work such as water pumping, surface arrangement, clearing and re-do work, etc. (0.5day)	1.5
14)	July 3, 2018 at Agana	Overnight rain → Due to rain, Compaction test for PCS foundation base course was postponed to 7/10 (7days)	7.0
15)	July 5, 2018 at Agana	Tropical Storm → No Work(1day) + additional work(2days)	3.0
16)	July 6, 2018 at Agana	Heavy rain and wind → Due to heavy rain, we stopped the work at 10:40(0.5day)	0.5
17)	July 16, 2018 at Agana	Heavy rain → Due to rain in the morning hours, Lifting container was postponed to 7/19 (3days)	3.0
Working Days of Construction Delays at Agana			15.0
Calendar Days of Construction Delays at Agana			19.0

1) May 1, 2018 at Talofofo (2 hours heavy rain in the morning / Stop Work)



2) May 2, 2018 at Talofofo (Overnight rain / No Work)

There was no work because the site was not in a good condition to proceed works; too muddy and water pools were present at several points. During the morning, we observed if work will be possible in the afternoon but we decided that it'd be better to continue work tomorrow.

3) May 18, 2018 at Talofofo (2 times heavy rain / Delayed Work)



- 4) June 8, 2018 at Talofofo (heavy rain afternoon / Early Finish)
- 5) June 20, 2018 at Talofofo (Overnight rain & heavy rain afternoon / Delayed Work)



- 6) June 27, 2018 at Talofofo (Overnight rain & heavy rain / Delayed Work)





7) June 29, 2018 at Talofofu (Overnight rain / Pump out work)





8) July 5, 2018 at Talofofo (Tropical Storm/ No Work)



9) July 9, 2018 at Talofofo (Overnight rain / Pump out work)



10) July 12, 2018 at Talofofo (Overnight rain / Can not proceed compaction work)



11) July 16, 2018 at Talofofo (Overnight rain & heavy rain / Delayed Work)



12) July 19, 2018 at Talofofo (Afternoon heavy rain / Early Finish)



* Note: Compaction works were delayed for below period due to heavy rain

- Subbase: 6/19-6/21, 6/27-29

- Base course: 7/5-7/9, 7/11-7/17, 7/20-7/23

13) May 2, 2018 at Agana (Overnight rain / No Work)

14) July 3, 2018 at Agana (Overnight rain)

Due to rain, Compaction test for PCS foundation base course was postponed to 7/10



15) July 5, 2018 at Agana (Tropical Storm / No Work)

16) July 6, 2018 at Agana (Heavy rain and wind / No Work)

Due to heavy rain, we stopped the work at 10:40



17) July 16, 2018 at Agana (Heavy rain / No Work)

Due to rain in the morning hours, Lifting container was postponed to 7/19

AMENDMENT NO. III TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.

Received
2/11/19
Hyunjae Tae

This AMENDMENT NO. III is entered into on JANUARY 1, 2019 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
920 Sylvan Avenue
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, CONTRACT AMENDMENT NO. I extended the design and construction completion date to September 30, 2018 and increased the total design and construction contract amount to \$35,734,289.39 for additional scope of work; and

WHEREAS, CONTRACT AMENDMENT NO. II extended the design and construction completion date to December 31, 2018; and

WHEREAS, due to circumstances identified in EXHIBIT A, GPA and CONTRACTOR have agreed to further extend the design and construction completion date to March 31, 2019, the O&M services completion date to March 31, 2044, and the 20-year warranty expiration date to March 31, 2039.

AMENDMENT TO THE CONTRACT

NOW, THEREFORE, GPA and CONTRACTOR for the considerations set forth, agree to amend the CONTRACT as follows:

1. Replace Section 4.1 Term with the following:

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for six hundred eighty-six calendar (686) days after NTP on MAY 15, 2017 and shall continue until the midnight of MARCH 31, 2019.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years after commissioning on APRIL 1, 2019 and shall continue until the midnight of MARCH 31, 2044.

The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years after commissioning on APRIL 1, 2019 and shall continue until the midnight of MARCH 31, 2039.

All other terms and conditions of the CONTRACT, CONTRACT AMENDMENT NO. I and CONTRACT AMENDMENT NO. II shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT NO. III effective this day of January 1, 2019.

CONTRACTOR:

LG CNS AMERICA, INC.



GILHO CHOI
President


OWNER:

GUAM POWER AUTHORITY



JOHN M. BENAVENTE, P.E.
General Manager

APPROVED AS TO FORM:

By: 

D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney



EXHIBIT A



Change Proposal

Timeline Extension Proposal 'LGCNS-GPAESS1-181204-CP003'

Document Number : LGCNS-GPAESS1-181204-CP003

LG CNS America, Inc.,
920 Sylvan Avenue, Englewood Cliffs, New Jersey 07632
December 4, 2018

To: John M. Benavente, P.E.
General Manager
Guam Power Authority
P.O. Box 2977 Hagatna, Guam 96932
Tel: (671) 648-3101

Dear Mr. John M. Benavente;

This is with regard to the contract, C-082-15, signed between GPA and LG CNS on May 15, 2017 and the amendment II extended the delivery date from September 30, 2018 to December 31, 2018.

We would like to have a change in the contract regarding the schedule. The summarized justification is as mentioned in below and detailed information in the attachments. We would like to ask for your close review on the below and attached information and to let us know if you have any questions.

Justification

1. Super Typhoon Mangkhut on September 10, 2018 was the worst typhoon of category 5 in Guam since Typhoon Pongsona in 2002. It caused widespread outages over the island and GPA devoted its utmost effort and time to restore its Island Power Systems to normal condition. Before typhoon arrival, we've done our best to prevent severe damages and fortunately there were minor damages at both construction sites. However, construction delay caused by Mangkhut was inevitable for us. For example, due to Mangkhut, there were GPA's restoration works for Cabras line 1, Cabras line 2 and breaker of Cabras line 2. Thus, we can't proceed with switch yard works at Agana until the end of September as we can't get outage approval from GPA. **(Calendar Days of Delays are 21 days)**
2. Moreover, we've experienced 2 more Typhoons (Yutu on October 24, 2018 and Man-Yi on November 22, 2018) and heavy rains. During 3 months, there were 30 more rainy days which affected project schedule. In addition to delayed work due to rains, additional time and effort required to re-mobilize equipment and field workers to catch-up the project schedule. For the detailed information, please refer to the attachment #1. **(Calendar Days of Delays are 35 days)**
3. Both LG CNS and GPA have spent considerable time and effort to get DPW Building Permit which is the most important milestone of the project to move forward. And finally we got DPW Building Permit on November 6, 2018. Calendar Days of Delays are 75 days, however, we've got



DPW Foundation Permit to proceed construction works even though it caused us cost impact to prevent further delay. So, we reduced 75 days to 35 days of delay. Please refer to the attachment #2. **(Calendar Days of Delays are 35 days)**

Thus, LG requests schedule extension of approximately **91 more calendar days** from the project finish date of December 31, 2018 to complete the project. We expect that the change is to be made at the earliest and we will ensure this change will be in line as indicated. We really appreciate your understanding for the inconvenience caused to you.

Thank you.

Sincerely,

Hyunjoon Tae

Project Manager

Attachment #1:

Days of Delays due to heavy rains and typhoons

No.	Date/Site	Description of Delays	Days of Delay
1)	Aug 2, 2018 at Talofofo	Continuous rain (small work for 2 hours in the morning) → Delayed Work(0.8day) + additional work such as water pumping, surface arrangement, clearing and re-do work, etc. (0.7day)	1.5
2)	Aug 3, 2018 at Talofofo	Continuous rain → No Work(1day) + additional work(1day)	2.0
3)	Aug 6, 2018 at Talofofo	Heavy rain overnight & early morning → No Work(1day) + additional work(1day)	2.0
4)	Aug 15, 2018 at Talofofo	Many heavy rain showers → Delayed Work(0.5day) + additional work(1day)	1.5
5)	Aug 16, 2018 at Talofofo	3 hours stand-by by heavy rain → Delayed Work(0.5day) + additional work(1day)	1.5
6)	Aug 20, 2018 at Talofofo	Heavy rain in the morning and rain continued (Only water pumping out near trench was done for the day) → Delayed Work(0.5day) + additional work(1day)	1.5
7)	Aug 21, 2018 at Talofofo	1h30m heavy rain and continuous rain in the morning → Delayed Work(0.5day) + additional work(1day)	1.5
8)	Aug 24, 2018 at Talofofo	1hour of continuous rain/shower in the morning → Delayed Work(0.5day) + additional work(0.5day)	1.0
9)	Sept 4, 2018 at Talofofo	Rain/shower 1h → Delayed Work(0.5day)	0.5
10)	Sept 10, 2018 at Talofofo	Typhoon "Mangkhut" → Delayed Work(3day) + additional work(2day) → Construction works were postponed by wet soil and temporary power outage	5.0
11)	Sept 13, 2018 at Talofofo	1 hour of continuous rain in the morning → Delayed Work(0.5day)	0.5
12)	Sept 21, 2018 at Talofofo	Rain showers in the morning (due to heavy rain forecast, there was only half day work done on site) → No Work(0.5day) + additional work(1day)	1.5
13)	Sept 25, 2018 at Talofofo	Several times heavy rains → Delayed Work(0.5day) + additional work(0.5day)	1.0
14)	Oct 1, 2018 at Talofofo	Muddy due to overnight rain → Delayed Work(0.5day)	0.5
15)	Oct 2, 2018 at Talofofo	Muddy due to overnight rain → Delayed Work(0.5day)	0.5
16)	Oct 5, 2018 at Talofofo	Muddy due to overnight rain → Delayed Work(0.5day)	0.5
17)	Oct 15, 2018 at Talofofo	Muddy soil and heavy rain showers (34.5kV XFMR subbase compaction test was canceled due to muddy soil and heavy rain) → Delayed Work(1day) + additional work(1day)	2.0
18)	Oct 16, 2018 at Talofofo	morning 1 hour, afternoon 1 hour, finished work 1 hour earlier (34.5kV XFMR subbase compaction test was canceled due to muddy soil and heavy rain again) → Delayed Work(1day) + additional work(1day)	2.0
19)	Oct 17, 2018 at Talofofo	Continuous rain until 3PM, including heavy rain fall (Battery rack	1.5

		delivery canceled due to heavy rain) → Delayed Work(0.5day) + additional work(1day)	
20)	Oct 19, 2018 at Talofofo	Many heavy rain showers throughout the day (Delivery, unloading delayed and compaction works unavailable due to weather) → Delayed Work(0.5day) + additional work(1day)	1.5
21)	Oct 22, 2018 at Talofofo	Rain showers in the morning and afternoon → Delayed Work(0.5day)	0.5
22)	Oct 24, 2018 at Talofofo	Typhoon "Yutu" approach → Delayed Work(0.5day) + additional work(1day)	2.0
23)	Oct 25, 2018 at Talofofo	No work for today due to the typhoon "Yutu" passing → No Work(1day) + additional work(1day)	2.0
24)	Oct 29, 2018 at Talofofo	Site was muddy and had many small water ponds at excavated area due to heavy rain fall overnight → Delayed Work(0.5day) + additional work(0.5day)	1.0
25)	Nov 1, 2018 at Talofofo	Heavy rain shower in the morning → Delayed Work(0.5day)	0.5
26)	Nov 8, 2018 at Talofofo	Excavation/installation for underground conduit, ground mesh wire installation works were delayed due to muddy site condition by heavy rain → Delayed Work(0.5day) + additional work(0.5day)	1.0
27)	Nov 9, 2018 at Talofofo	Installation of underground conduit and ground mesh wire works were delayed due to muddy site condition by heavy rain shower → Delayed Work(0.5day) + additional work(0.5day)	1.0
28)	Nov 26, 2018 at Talofofo	Muddy due to Typhoon "Man-Yi" during holidays → Delayed Work(0.5day) + additional work(0.5day)	1.0
29)	Nov 28, 2018 at Talofofo	Muddy due to overnight rain → Delayed Work(0.5day)	0.5
30)	Nov 29, 2018 at Talofofo	Muddy with some water ponds due to overnight & morning rain → Delayed Work(0.5day) + additional work(0.5day)	1.0
Working Days of Construction Delays at Talofofo			40.0
Calendar Days of Construction Delays at Talofofo			56.0
31)	Aug 2, 2018 at Agana	No work due to heavy rain and strong wind → No Work(1day) + additional work(0.5day)	1.5
32)	Aug 3, 2018 at Agana	No work due to heavy rain and strong wind → No Work(1day) + additional work(0.5day)	1.5
33)	Aug 6, 2018 at Agana	Heavy rain overnight & early morning → No Work(1day) + additional work(0.5day)	1.5
34)	Aug 13, 2018 at Agana	3 times shower → Delayed Work(0.5day)	0.5
35)	Aug 15, 2018 at Agana	Cloudy with rain shower → Delayed Work(0.5day)	0.5
36)	Aug 16, 2018 at Agana	Due to heavy rain, we didn't proceed with demolition work → No Work for Switch yard area (1day)	1.0
37)	Aug 20, 2018 at Agana	No work due to heavy rain and site condition is too bad to work. Weather condition will not get better according to weather forecast → No Work(1day)	1.0
38)	Aug 21, 2018 at Agana	No work due to heavy rain and site condition is too bad to work. → No Work(1day)	1.0
39)	Sept 10, 2018 at Agana	Typhoon "Mangkhut"	20.0

		→ Delayed Work for Switch yard area (14day) + additional work(2day) + equipment re-mobilization(4day) → We can't proceed construction works at switchyard area until 9/28 as GPA can't approve outage due to Typhoon restoration works	
40)	Sept 13, 2018 at Agana	Heavy rain → Delayed Work(0.5day)	0.5
41)	Sept 21, 2018 at Agana	Raining all day → Delayed Work(0.5day) + additional work(0.5day)	1.0
42)	Sept 25, 2018 at Agana	Continuous rain (We stopped working before noon due to continuous rain and soil condition) → No Work(0.5day) + additional work(0.5day)	1.0
43)	Sept 27, 2018 at Agana	Heavy rain (intermittent rain in the morning, heavy rain in the afternoon) → Delayed Work(0.5day) + additional work(0.5day)	1.0
44)	Oct 10, 2018 at Agana	Showers (Compaction test for the base course for transformer foundation Failed due to showers) → Delayed Work(0.5day) + additional work(0.5day)	1.0
45)	Oct 15, 2018 at Agana	Heavy rain in the morning (We were not able to work for interconnection before noon) → No Work for Switch yard area (0.5day)	0.5
46)	Oct 16, 2018 at Agana	Mostly rainy (Due to heavy rain, we were not able to proceed with compaction at switchyard.) → No Work for Switch yard area (1day)	1.0
47)	Oct 17, 2018 at Agana	Heavy rain in the morning (We were not able to work for interconnection before noon) → No Work for Switch yard area (1day)	1.0
48)	Oct 24, 2018 at Agana	Typhoon "Yutu" approach → Delayed Work(0.5day) + additional work(0.5day)	1.0
49)	Oct 25, 2018 at Agana	No work for due to the typhoon "Yutu" passing → No Work(1day) + additional work(0.5day)	1.5
50)	Nov 9, 2018 at Agana	Rainy in the morning (Removal of mud in drain pit and cleaning trench) → Delayed Work(0.5day) + additional work(0.5day)	1.0
51)	Nov 21, 2018 at Talofofo	Typhoon "Man-Yi" Preparation → Additional work(0.5day)	0.5
52)	Nov 30, 2018 at Agana	Several times heavy showers → Delayed Work(0.5day)	0.5
Working Days of Construction Delays at Agana			40.0
Calendar Days of Construction Delays at Agana			56.0

Days of delays due to super Typhoon Mangkhut (No Switchyard works at Agana) are **21 calendar days** and
Days of delays due to heavy rains and 2 times typhoons are **35 calendar days**



Attachment #2:

Days of Delays for DPW Building Permit

Below table is days of delays in the pre-final design & DPW building permit when comparing Amendment II delivery schedule until 12/31/2018 and proposed delivery schedule until 3/31/2019.

Amendment II delivery schedule until 12/31/2018

Tasks	Duration	Start	Finish (A)
Pre-Final Design	49 d	Mon 18-06-11	Fri 18-08-17
Pre-Final Design Submission to GPA	28 d	Mon 18-06-11	Thu 18-07-19
Pre-Final Design Review and Approval	21 d	Fri 18-07-20	Fri 18-08-17
Process DPW Building Permit	5 d	Mon 18-08-20	Fri 18-08-24

Amendment III delivery schedule until 3/31/2019

Tasks	Duration	Start	Finish (B)
Pre-Final Design	68 d	Mon 18-06-11	Fri 18-09-14
Pre-Final Design Submission to GPA	28 d	Mon 18-06-11	Thu 18-07-19
Pre-Final Design Review and Approval	40 d	Fri 18-07-20	Fri 18-09-14
Process DPW Building Permit	12 d	Mon 18-10-22	Tue 18-11-06

Days of Delays

Tasks	Days of Delays(B-A)
Pre-Final Design	29
Pre-Final Design Submission to GPA	
Pre-Final Design Review and Approval	
Process DPW Building Permit	75

Total days of DPW Building Permit delays are 75 calendar days and approximately 35 more calendar days of them have affected overall project schedule delays.

Received 7/6/2019
LG CNS SC Kim

**AMENDMENT NO. IV TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.**

This AMENDMENT NO. IV is entered into on APRIL 1, 2019 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
920 Sylvan Avenue
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, CONTRACT AMENDMENT NO. I extended the design and construction completion date to SEPTEMBER 30, 2018 and increased the total design and construction contract amount to \$35,734,289.39 for additional scope of work; and

WHEREAS, CONTRACT AMENDMENT NO. II extended the design and construction completion date to DECEMBER 31, 2018; and

WHEREAS, CONTRACT AMENDMENT NO. III extended the design and construction completion date to MARCH 31, 2019; and

WHEREAS, due to circumstances identified in EXHIBIT A, GPA and CONTRACTOR have agreed to extend the curing default period to OCTOBER 31, 2019 as the date of the final completion of the project. The O&M services completion date shall be OCTOBER 31, 2044, and the 20-year warranty expiration date to OCTOBER 31, 2039; and

**AMENDMENT NO. IV TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.**

This AMENDMENT NO. IV is entered into on APRIL 1, 2019 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
920 Sylvan Avenue
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, CONTRACT AMENDMENT NO. I extended the design and construction completion date to SEPTEMBER 30, 2018 and increased the total design and construction contract amount to \$35,734,289.39 for additional scope of work; and

WHEREAS, CONTRACT AMENDMENT NO. II extended the design and construction completion date to DECEMBER 31, 2018; and

WHEREAS, CONTRACT AMENDMENT NO. III extended the design and construction completion date to MARCH 31, 2019; and

WHEREAS, due to circumstances identified in EXHIBIT A, GPA and CONTRACTOR have agreed to extend the curing default period to OCTOBER 31, 2019 as the date of the final completion of the project. The O&M services completion date shall be OCTOBER 31, 2044, and the 20-year warranty expiration date to OCTOBER 31, 2039; and

WHEREAS, due to circumstances identified in EXHIBIT A, CONTRACTOR shall design and install a 300 kW generator set to power the Hagatna facility in case of power loss. This work shall be completed no later than MARCH 1, 2020. Liquidated damages of \$200.00 per calendar day shall commence on MARCH 2, 2020 in the event this portion of the work is not completed by this date.

AMENDMENT TO THE CONTRACT

NOW, THEREFORE, GPA and CONTRACTOR for the considerations set forth, agree to amend the CONTRACT as follows:

1. Replace Section 4.1 Term with the following:

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for nine hundred (900) calendar days after NTP on MAY 15, 2017 and shall continue until the midnight of OCTOBER 31, 2019.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years after commissioning on NOVEMBER 1, 2019 and shall continue until the midnight of OCTOBER 31, 2044.

The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years after commissioning on NOVEMBER 1, 2019 and shall continue until the midnight of OCTOBER 31, 2039.

In consideration of GPA's grant extension, CONTRACTOR shall design and install a 300 kW generator set to power the Hagatna facility in case of power loss. This work shall be completed no later than MARCH 1, 2020. Liquidated damages of \$200.00 per calendar day shall commence on MARCH 2, 2020 in the event this portion of the work is not completed by this date.

All other terms and conditions of the CONTRACT, CONTRACT AMENDMENT NO. I, CONTRACT AMENDMENT NO. II, and CONTRACT AMENDMENT NO. III shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT NO. IV effective this day of APRIL 1, 2019.

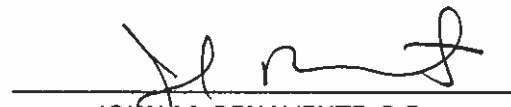
CONTRACTOR:

LG CNS AMERICA, INC.

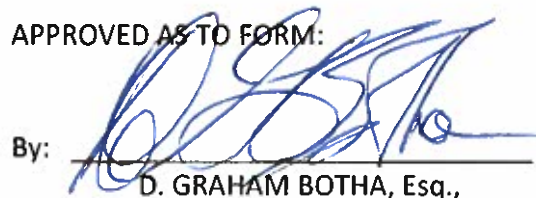

CHANG HYUN KIM
President

OWNER:

GUAM POWER AUTHORITY


JOHN M. BENAVENTE, P.E.
General Manager

APPROVED AS TO FORM:

By: 
D. GRAHAM BOTHA, Esq.,
GPA Staff Attorney

**AMENDMENT NO. V TO
CONTRACT FOR THE ENERGY STORAGE SYSTEM PHASE I PROJECT
MULTI-STEP BID NO. GPA-082-15
BETWEEN
GUAM POWER AUTHORITY
AND
LG CNS AMERICA, INC.**

This AMENDMENT NO. V is entered into on APRIL 1, 2021 by and between:

Guam Power Authority ("GPA")
Gloria B. Nelson Public Service Building
688 Route 15
Mangilao, Guam 96913

and

LG CNS America, Inc. ("CONTRACTOR")
111 Sylvan Avenue South Bldg 12
Englewood Cliffs, NJ 07632

RECITALS

WHEREAS, GPA and CONTRACTOR entered into a contract ("CONTRACT") dated May 15, 2017 in which CONTRACTOR shall design and construct the Energy Storage System Phase I project for \$34,999,070.00 and provide O&M services for the annual amounts set forth in the CONTRACT; and

WHEREAS, CONTRACT AMENDMENT NO. I extended the design and construction completion date to SEPTEMBER 30, 2018 and increased the total design and construction contract amount to \$35,734,289.39 for additional scope of work; and

WHEREAS, CONTRACT AMENDMENT NO. II extended the design and construction completion date to DECEMBER 31, 2018; and

WHEREAS, CONTRACT AMENDMENT NO. III extended the design and construction completion date to MARCH 31, 2019; and

WHEREAS, CONTRACT AMENDMENT NO. IV extended the design and construction completion date to OCTOBER 31, 2019 and added the installation of a 300 kW generator at the Hagatna facility by MARCH 1, 2020; and

WHEREAS, due to circumstances resulting from the COVID-19 pandemic and the terms agreed upon by GPA and CONTRACTOR identified in EXHIBIT A, GPA and CONTRACTOR have agreed to

extend the design and construction completion date, including the installation of 300 kW generator at the Hagatna facility, to MARCH 31, 2021. The O&M services start date shall be MARCH 1, 2021 and shall continue until FEBRUARY 28, 2046. The 20-year warranty start date shall be MARCH 1, 2021 and shall continue until FEBRUARY 28, 2041.

AMENDMENT TO THE CONTRACT

NOW, THEREFORE, GPA and CONTRACTOR for the considerations set forth, agree to amend the CONTRACT as follows:

1. Replace Section 4.1 Term with the following:

The term of this Contract for the design and construction of the Energy Storage System Phase I project shall be for one thousand four hundred seventeen (1417) calendar days after NTP on MAY 15, 2017 and shall continue until the midnight of MARCH 31, 2021.

The term of this Contract for the O&M services for the Energy Storage System Phase I project shall be for a period of twenty-five (25) years starting on MARCH 1, 2021 and shall continue until the midnight of FEBRUARY 28, 2046.

The term of this Contract for the Warranty of the Energy Storage System Phase I project shall be for a period of twenty (20) years starting on MARCH 1, 2021 and shall continue until the midnight of FEBRUARY 28, 2041.

All other terms and conditions of the CONTRACT, CONTRACT AMENDMENT NO. I, CONTRACT AMENDMENT NO. II, CONTRACT AMENDMENT NO. III, and CONTRACT AMENDMENT NO. IV shall remain unchanged.

IN WITNESS WHEREOF, the parties hereto have executed this AMENDMENT NO. V effective this day of APRIL 1, 2021.

CONTRACTOR:

LG CNS AMERICA, INC.



CHANG HYUN KIM
Chief Executive Officer

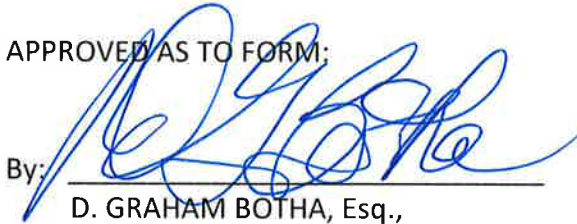
OWNER:

GUAM POWER AUTHORITY



JOHN M. BENAVENTE, P.E.
General Manager

APPROVED AS TO FORM:



By: _____
D. GRAHAM BOTHA, Esq.,
GPA General Counsel

EXHIBIT A

GPA and CONTRACTOR agree to the following:

1. CONTRACTOR, its successors and assigns as well as all of its subcontractors who participated in said project in any way, forever release and discharge Guam Power Authority, its officers, agents and employees from all liability, obligations and claims, as of April 1, 2021, whether existing in law and in equity, that have arisen or may arise, out of Contractor's involvement in said project.
2. GPA will waive the Liquidated Damages fee and all cost claims during design and construction, except for any defects, without limitation, in design, materials, workmanship, operating characteristics, or performance under warranty as specified in the CONTRACT.
3. GPA and CONTRACTOR will provide the designated O&M services identified for each party in the O&M Plan documents.
4. CONTRACTOR will provide the following technical support during the O&M contract period:
 - A. The LG O&M Manager, Tony Tae, will remain on Guam until the end of February 2022.
 - B. EPC team members, JC Kim and KR Lee, will provide additional O&M support until the middle of May 2021.
 - C. Woonyoung Park (Agana ESS) and Won Kwan Choi (Talofofo ESS) will be the LG O&M technical support engineers dedicated to the ESS Phase I O&M team. Verbal communication with GPA may be limited but a translator will be provided if needed. However, they will also be able to communicate through emails with GPA.
 - D. The LG O&M technical support engineers will provide daily remote support. They will check the status of the PMS daily, review all reports submitted by the local O&M subcontractor and email any issues to GPA.
 - E. For troubleshooting issues, the local O&M subcontractor will contact equipment manufacturers first. The LG O&M technical support engineers will be contacted if further assistance is needed and they will respond within one to two hours.
 - F. The LG O&M technical support engineers will assist remotely from Korea when needed, but will fly to Guam within a day if the issue cannot be resolved by the local O&M subcontractor or through remote assistance via video conference calls. However, arrival time may depend on COVID-19 pandemic limitations. They may be able to stay for a short period of time (a week to a month), but this will need to be approved by LG's HR and management.
 - G. PXiSE Energy Solutions will provide technical support for the PMS for 25 years remotely or on-island as needed.
 - H. The CGIS and transformer manufacturer, Hyundai, will be on Guam for the first annual maintenance to provide further jobsite training to the local O&M subcontractor.
 - I. Specialists from the manufacturers will be sent to Guam for the maintenance of the

CGIS, PCS, and batteries when there are equipment faults which the local O&M subcontractor is not able to correct.

- J. GPA may request a change in the O&M team if the current arrangement does not adequately provide the services required.
5. CONTRACTOR will provide the following after final project completion:
- A. T-401 spare parts (2 HV bushings, 2 LV bushings, 1 N bushing and 2 Hydran sensors) by November 30, 2021. GPA may withhold the cost of the spare parts from the O&M payment if the parts are not received by November 30, 2021.
 - B. ESS warranty bond and warranty documents from manufacturers by May 31, 2021. GPA will withhold \$4,138,611.52 until the warranty bond is received from CONTRACTOR. Thereafter, GPA will withhold \$200,000 until the T-401 spare parts purchase order and proof of initial payment are received by GPA by May 31, 2021.