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Invitation For Multi-Step Bid

No. GPA-050-24

SUPPLY OF DIESEL FUEL OIL NO.2
TO VARIOUS GPA PLANT SITE LOCATIONS

Volume II

CONTRACT

MOBIL OIL GUAM, INC.
(CONTRACTOR)

MW 12/10/2024

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CONTRACT

MOBIL OIL GUAM, INC. ("MOGI")
(CONTRACTOR)

GUAM POWER AUTHORITY

2025

IFB No. GPA-050-24

SUPPLY OF DIESEL FUEL OIL NO.2 TO VARIOUS GPA PLANT SITE LOCATIONS

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FORMAL CONTRACT

This Agreement and Formal Contract ("Contract"), is made and entered into on the _____ day of _____, 2024 by and between:

MOBIL OIL GUAM INC. ("MOGI"), hereinafter referred to as **CONTRACTOR**, duly organized, licensed, registered and qualified to do business in Guam with its principal address at 642 East marine Corps Drive, Hagatna Guam

- and -

GUAM POWER AUTHORITY, hereinafter referred to as the **"Authority"** or **"GPA"**, a Public Corporation with its office located at the Gloria Nelson Public Service Complex, Fadian, Mangilao Guam;

RECITALS

WHEREAS, GPA desires to maintain uninterrupted supply of Diesel Fuel Oil No.2 to its Power Plant site locations;

WHEREAS, the Third (3rd) year and final extension of the current contract for the supply of Diesel will expire on December 31, 2024; and

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WHEREAS, GPA seeks to procure a new Diesel Fuel Oil No.2 Supply contractor through a competitive bid process; and

WHEREAS, the Consolidated Commission on Utilities has determined that the procurement of a contractor is a preferred option for **GPA** to supply the Diesel Fuel Oil No.2 requirements for the Authority;

WHEREAS, the Guam Public Utilities Commission has ordered **GPA** to proceed with the procurement of a contractor for the Supply of Diesel Fuel Oil No.2;

WHEREAS, GPA has issued an Invitation For a Multi-Step Bid for the Supply of Diesel Fuel Oil No.2 under IFB GPA-050-24 for Site Location 1 (Yigo CT and Yigo Diesel); Site Location 2 (Macheche CT and Dededo CT); Site Location 3 (Cabras 1&2 and Piti 7); and Site Location 4 (Manenggon Diesel Plant and Talofofo Diesel Plant) on "As Needed" basis; and

WHEREAS, CONTRACTOR submitted a bid in response to the Invitation for Bid for the Supply of Diesel Fuel Oil No.2;

WHEREAS, GPA, upon evaluation of the submitted bid proposals, determined that **CONTRACTOR** is the lowest responsive and responsible bidder for **Site Location 1 (Yigo CT and Yigo Diesel)**, and Site **Location 4 (Manenggon Diesel Plant and Talofofo Diesel Plant)** ; and

WHEREAS, the Guam Consolidated Commission on Utilities (CCU) and the Guam Public Utilities Commission (PUC) has determined that the **CONTRACTOR** is the preferred option for **GPA** to supply the Diesel Fuel Oil No.2 requirements for the Authority.

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

SECTION 1. DEFINITIONS

"API" shall mean the American Petroleum Institute.

"ASTM" shall mean the American Society for Testing and Materials.

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"Barrel" shall mean a volume equivalent to 42 U.S. gallons.

"Contract" shall mean the Diesel Fuel Oil No.2 Supply Contract executed as a result of this IFB.

"Contract Agreement (Agreement)" shall mean the written agreement between **GPA** and **CONTRACTOR** covering the Supply of Diesel Fuel Oil No.2 any other Contract Documents either attached to the Agreement or made a part thereof by reference therein.

"Contract Documents" shall mean the Contract Agreement, Bonds (where required), these General Conditions, any Supplementary Conditions, the Specifications, and any other documents specifically identified in the Contract Agreement, together with all Modifications issued after execution of the Contract Agreement.

"Contracting Officer" shall mean the General Manager of the Guam Power Authority and shall include his authorized representatives.

"CONTRACTOR" shall mean the party or parties who or which shall have duly entered into a contract with the Guam Power Authority to perform the work herein contemplated or its or their authorized assignee.

"Day" shall mean a calendar day of twenty-four (24) hours measured from midnight to the next midnight.

"Delivery Time" shall mean the total number of days or the dates stated in the Agreement for furnishing the product.

"Diesel Fuel Oil No.2" or "Diesel Fuel Oil" or "Fuel Oil" or "Diesel" or "ULSD" shall mean a liquid hydrocarbon product satisfying the specifications in **Schedule A**.

"Gallon" shall mean a U.S. standard gallon of 231 cubic inches at sixty degrees Fahrenheit.

"General Manager" shall mean the General Manager is the Chief Executive Officer of the Guam Power Authority. The office and title of General Manager shall apply to any person

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acting in a regular or in an acting capacity as the Chief Executive Officer of the Guam Power Authority.

"Notice" shall mean and include all written notice demands, instructions, claims, approvals and disapprovals required to obtain compliance with contract requirements. Any written notice by either party to the contract shall be sufficiently given if delivered to or at the last known business address of the person, firm, or corporation constituting the other party to the contract, or to his, their, or its duly authorized agent, representative, or officers, or when enclosed in a postage prepaid envelope addressed to such last known business address and deposited in a United States mail box. The **CONTRACTOR** must provide and maintain a post office address within Guam and file the same with the Contracting Officer.

"OPA'90" shall mean the Oil Pollution Act of 1990 by the U.S. Congress.

"Platt's Asia-Pacific/Arab Gulf Marketscan" shall mean the reference source document for the fuel Contract pricing.

"Procurement Officer" shall mean the General Manager of the Guam Power Authority or the General Manager's designee.

"PURCHASER" shall mean the Guam Power Authority with whom **CONTRACTOR** has entered into the Contract Agreement.

"Receiving facility" means the GPA-leased bulk storage tank facility at the Tristar Terminals Guam, Inc., and the **GPA** plant receiving facility at the site location identified in **Schedule B**.

"Seller" shall mean the **CONTRACTOR**.

"Territory" shall mean the Territory of Guam.

"$" shall refer to currency in U.S. dollars.

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SECTION 2. FUEL OIL TO BE SUPPLIED

GPA has installed a new pipeline network to some of the plants for transferring Diesel Fuel Oil No.2 primarily from the GPA bulk storage facility(ies). In the event that such pipeline or facility is not available or becomes unavailable, Diesel Fuel Oil must be supplied and delivered by the **CONTRACTOR** on an "As Needed" basis from the **CONTRACTOR** storage facility to the various **GPA** plant sites covered in this Contract.

CONTRACTOR agrees to furnish and **GPA** agrees to accept and pay for all of **GPA**'s diesel fuel oil delivered to the power generating plants in Guam for the term of the Contract.

Fuel Oil to be supplied to **GPA** shall conform to the product quality requirements specified in **Schedule A** and shall come from reputable sources not sanctioned by the United States government.

Fuel Oil must be delivered from the **CONTRACTOR** storage to the various GPA plant sites covered in this Contract. The **CONTRACTOR** shall be available to deliver the Fuel Oil to the point of delivery as designated by **GPA** within twelve (12) hours or sooner of receiving a request. **CONTRACTOR** must be available to receive and accept delivery requests daily, including weekends and holidays.

The **CONTRACTOR** shall provide transfer pumps and/or whatever else may be necessary to deliver Fuel Oil to **GPA** plant storage tanks to the height of 45 feet. Fuel Oil deliveries shall be on an "As Needed" basis. **CONTRACTOR** must closely coordinate with the plants and shall exercise its best efforts to deliver Fuel Oil to **GPA** to meet operational requirements regardless of the estimates provided by **GPA.**

CONTRACTOR must also be able to provide sufficient fleet to deliver the quantities as required by **GPA**.

a. Estimated annual consumption based on historical data is provided in Schedule B. Actual delivery quantities may vary from day to day depending on the dispatching of the plants.
b. Consumption at maximum plant capacities is listed Schedule C. Actual delivery quantities may vary from day to day depending on the dispatching of the plants.

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GPA reserves the right to nominate quantities each month and will not guarantee equal amounts of volume every month. Fuel oil deliveries may be low or not needed one month and increase the next month.

SECTION 3. CONTRACT TERM

The Contract Term shall be for THREE (3) years and shall commence on or about after 0:00 hour on **January 01, 2025**, and shall continue until midnight of **December 31, 2027. GPA** shall have the right to extend the Contract **for additional TWO (2) years, renewable annually, with mutual agreement of both parties**.

Extension. Prior to the expiration of the three-year Contract term, **GPA** may, at its election, extend the Contract for up to two additional one-year terms. **GPA** and **CONTRACTOR** may renew this agreement upon the mutual agreement of the parties.

Notice of Extension. GPA shall notify **CONTRACTOR** in writing or by email its intent to extend the Contract for any extension no later than six months before the contract termination date. **GPA** shall give appropriate notice of its intentions regarding its option to exercise contract extension. The notification will include the number of years **GPA** intends to extend the Contract, not to exceed two (2) years.

At the beginning of the 3rd Contract year **GPA** and the **CONTRACTOR** shall negotiate the Contract extension terms based on the optimum requirements of **GPA**. These requirements shall be considered as starting negotiation points between **GPA** and the **CONTRACTOR**, should **GPA** elect to exercise the optional Contract extension. Final confirmation by mutual agreement between **GPA** and the **CONTRACTOR** for Contract extension shall be given after completion of negotiation no later than six months before Termination Date. However, **GPA** may elect to reverse its decision without penalty at any time within six months of the end of the Contract period based on the CONTRACTOR's poor performance during this period and Contractor's failure to cure.

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SECTION 4. CONTRACT PRICE

The **CONTRACT PRICE** in U.S. dollars per Gallon ($/gal) for all Fuel Oil delivered to **GPA** shall be inclusive of all costs and liabilities required to fulfill the contract.

The **CONTRACT PRICE** is the sum of the **REFERENCE PRICE** plus the **FIXED SERVICE FEE**.

The **CONTRACT PRICE** shall increase or decrease on a cent-for-cent basis with the **REFERENCE PRICE**.

The **REFERENCE PRICE** for the Fuel Oil supplied and delivered by CONTRACTOR from the **CONTRACTOR**'s storage into the GPA Plants shall be the mean average of the previous month's daily Mid-of-Platts (MOPS) price postings. MOPS is the average of high and low price assessments reported in the Platt's Asia-Pacific/Arab Gulf Marketscan FOB Singapore Price Assessment for Gasoil 10 ppm.

The **FIXED SERVICE FEE** for all Fuel Oil supplied and delivered by **CONTRACTOR** to the **GPA Plants** at the site locations and estimated quantities identified on **Schedule B** hereto shall be as follows:

CONTRACT FIXED SERVICE FEE	THREE (3) YEAR BASE PERIOD			TWO (2) YEAR EXTENSION OPTION	
	1st year $/gal (in 4 decimals)	2nd year $/gal (in 4 decimals)	3Rd year $/gal (in 4 decimals)	1st yr Extn $/gal (in 4 decimals)	2nd yr Extn $/gal (in 4 decimals)
SITE LOCATION 1: Yigo CT and Yigo Diesel	**$0.2800**	**$0.2900**	**$0.3000**	**$0.4000**	**$0.4000**
SITE LOCATION 4 : Manenggon and Talofofo	**$0.4770**	**$0.4880**	**$0.5000**	**$0.6000**	**$0.6000**

SECTION 5. INVOICE PRICE DETERMINATION

Sample Delivery Month: **August 2023**

(1) Sample Calculation of **REFERENCE PRICE**:

REFERENCE PRICE= Average of Previous Month's Daily MOPS

Previous Month: July 2023

Average of the Daily MOPS for July 2023: $101.756 per Barrel

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Average Price: $2.4228 per Gallon (rounded to four decimal places)

REFERENCE PRICE for **August 2023**: $2.4228 per Gallon

(2) Sample **FIXED SERVICE FEE**:

FIXED SERVICE FEE= $0.2000 per Gallon (sample price)

(3) CONTRACT PRICE

CONTRACT PRICE = Reference Price + Fixed Service Fee

CONTRACT PRICE = ($2.4228 + $0.2000) per gallon

CONTRACT PRICE = $2.6228 per gallon

This is the **CONTRACT PRICE** for fuel oil supplied and delivered by **CONTRACTOR** to **GPA** for the sample month.

For invoice calculation purposes, quantity shall be reported in barrels and gallons at standard sixty degrees Fahrenheit (60°F) as declared in the Bill of Lading.

SECTION 6. TITLE, CUSTODY AND RISK OF LOSS

Title and custody to the Fuel Oil supplied by **CONTRACTOR** and delivered to the **GPA** plants thereof shall pass from the **CONTRACTOR** to **GPA** when:

a. The Fuel Oil has passed the GPA pipeline flange at the GPA plant storage tanks connecting the **CONTRACTOR**'s hose if delivered by tanker truck.
b. The Fuel Oil has passed the GPA meter flange or pipeline flange at the GPA plant storage tanks connecting the **CONTRACTOR**'s pipeline flange if delivered by pipeline.

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 7. 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

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Gallons of Fuel Oil 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 60 °F.

SECTION 8. PAYMENT OF TAXES AND OTHER GOVERNMENT CHARGES

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

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

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

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

SECTION 9. WARRANTY AND CLAIMS

CONTRACTOR warrants that it has the facilities and resources sufficient to meet **CONTRACTOR**'s obligations under this Contract. Cost for the use of such resources shall be borne by the **CONTRACTOR**.

CONTRACTOR agrees, represents and warrants as follows:

a. Ability to Supply.

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

b. Ability to Deliver to the GPA Plants

   CONTRACTOR shall own, lease, sub-lease, or have the right to use tanker trucks, storage tanks, loading racks and gantries and other facilities sufficient to meet **CONTRACTOR**'s obligations for

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delivering the fuel oil to the GPA plants under this Contract.

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

Claims against the **CONTRACTOR** for direct costs incurred on account of their non-performance or negligent actions shall be given in writing together with all supporting documents, invoices and correspondence by **GPA** within thirty days (30) from date of delivery of fuel oil as specified in Section 4.

SECTION 10. PRODUCT AND QUALITY

The fuel oil delivered hereunder shall have the physical and chemical characteristics as described in **Schedule A**.

GPA reserves the right to require the supplier to add and to conduct additional tests as may be required.

SECTION 11. QUANTITY AND QUALITY ASSURANCE

GPA has installed a new pipeline network to some of the plants for transferring fuel primarily from the GPA bulk storage facility(ies). In the event that such pipeline or facility is not available or becomes unavailable, Fuel Oil must be supplied by the **CONTRACTOR** on an "As Needed" basis either by roadtanker deliveries or by pipeline transfer from the **CONTRACTOR** storage facility to the various GPA plant sites covered in this Contract.

a. **Delivery by Tanker Truck.**

CONTRACTOR, at its sole expense, shall utilize its terminal truck loading rack and metering system to determine the quantity of Diesel Fuel Oil No.2 delivered by tanker truck to **GPA**. Quantity of product delivered by **CONTRACTOR** at **CONTRACTOR**'s nominated tanker truck(s) to the GPA plants shall be determined at the time of each delivery by **CONTRACTOR**, converted in each instance to volume at 60 degrees Fahrenheit by the automated rack control system and shall be the basis for the Bill of Lading.

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CONTRACTOR at it sole expense, shall provide a pump and unload the product from the tanker truck into the GPA fuel receiving facility.

CONTRACTOR shall have such meters calibrated no less than annually and shall furnish **GPA** a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration 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 **GPA**.

CONTRACTOR is required to install security seals on valves and compartments of the delivery tanker trucks after Fuel Oil loading is completed. Seals shall remain intact upon inspection by the GPA receiving facility. Seal numbers shall be recorded in the delivery receipt and initialed by an authorized terminal representative. **GPA** reserves the right to reject deliveries with tampered or missing seals.

b. Delivery By Pipeline Transfer

Quantity of product delivered by the **CONTRACTOR** by pipeline transfer to **GPA** shall be determined utilizing the meter installed at the pipeline into the GPA plant storage tank.

i. In the event that a meter is not installed or is defective, quantity of the product delivered by the **CONTRACTOR** shall be determined by the **CONTRACTOR** meter. **CONTRACTOR** shall have such meters calibrated no less than annually and shall furnish **GPA** a copy of the certificate of newly calibrated meter(s) within 10 days after the calibration date. In the event of a dispute over the accuracy of the meter, 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 **GPA**.

ii. In the event that the **CONTRACTOR** meter is defective or is not installed, quantity of the product delivered by the **CONTRACTOR** shall be determined by an Independent Third Party Inspector by gauging the receiving tanks before and after delivery. Cost shall be borne by the **CONTRACTOR.**

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Quantity shall be corrected to the volume at sixty degrees Fahrenheit. Conversion shall be made in accordance with the ASTM-IP Petroleum Measurement Tables (IP-200), Table 6B (latest edition).

Appropriate Certificate of Quality (COQ) reports shall also accompany each delivery and must be presented to the **GPA** receiving facility. Quality must conform with the requirements specified in **Schedule A** as a condition for acceptance of delivery.

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

CONTRACTOR shall provide a comprehensive summary of the Fuel Oil delivery reports. **CONTRACTOR** shall tailor its reports to **GPA's** needs. **CONTRACTOR** shall submit copy(ies) of all Certificates of Quality (COQ) for the delivery month. Reports shall be submitted to the **GPA** weekly and monthly, within five (5) working days after each report month. **CONTRACTOR** shall also submit other reports and/or documentations that is relevant to the contract as may be required by the **GPA**.

SECTION 12. QUANTITY DETERMINATION

GPA reserves the right to require the intervention of a third party independent inspector for quantity determination. Such inspector shall be mutually acceptable to **GPA** and the **CONTRACTOR.** Cost shall be borne by the **CONTRACTOR.** All quantities shall be corrected to volume at sixty degrees Fahrenheit (60 °F) in accordance with the ASTM-IP Petroleum Measurement Table, Table 6B, the latest edition published shall be applicable.

Quantity certification prepared by independent inspector shall be final and binding upon both parties. Inspection report shall be submitted by **CONTRACTOR** to **GPA** no later than two (2) calendar days after completion of inspection and shall provide **GPA** unrestricted access to records or reports as may be required.

In the event of the variances between the Bill of Lading quantity and the shore tanks receipts, **GPA** shall pay (absorb) a quantity shortfall up to ONE-FOURTH PERCENT (0.25 %) of the barrel established quantity; shortages beyond the 0.25% shall be covered by the **CONTRACTOR**.

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SECTION 13. SECURITY OF SUPPLY

CONTRACTOR reserves the right to supply fuel oil meeting **GPA** quality requirements specified in Schedule A and may come from any sources not sanctioned by the United States government. In the event that supplies are taken from such other places, then the price to Guam will remain the same as established in **Section 4** above.

CONTRACTOR is required to maintain a minimum of thirty (30) days reserve/contingency inventory at the **CONTRACTOR**'s storage facility. A list of the GPA plant requirements is listed in **Schedule B.**

For security of supply in the event of unexpected, unplanned or forced baseload outages, severe typhoon or other calamities, **CONTRACTOR** shall prioritize delivery to the GPA plants and guarantee uninterrupted supply and delivery of Fuel Oil during the recovery period. **CONTRACTOR** must also be able to provide sufficient fleet to deliver the quantities listed in **Schedule C** as may be required by **GPA**.

CONTRACTOR must submit weekly and monthly fuel inventory and delivery report to **GPA**.

GPA reserves the right to audit the **CONTRACTOR** for safety fuel inventory stock compliance. Such audit shall be in accordance with generally accepted accounting practices.

SECTION 14. GOVERNMENT LAWS AND REGULATIONS

a. If at any time during the term of the Contract the Government of the United States or the Territory of Guam enacts laws or issues regulations which would prevent **GPA** from burning the type of fuel oil to be supplied hereunder, **GPA** shall use its best efforts to obtain an exemption. In the event **GPA** cannot obtain an exemption from such laws and regulations, **CONTRACTOR** shall use its 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

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adjustment under this section must be asserted in writing within thirty (30) days from date of receipt by **CONTRACTOR** of the notification of substitute fuel oil in compliance with Government laws, rules and regulations. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this Contract entitled "Governing Law and Disputes" (Section 22). However, nothing in this clause shall excuse the **CONTRACTOR** from proceeding with the Contract fuel oil specifications as changed in order to comply with Government laws, rules and regulations. Only in the event that the parties cannot mutually agree upon the price at which **CONTRACTOR** is to furnish such substitute fuel oil, and **CONTRACTOR** refuses to provide such substitute fuel oil at the Contract price set out herein shall **GPA** then have the option of purchasing from other sources fuel oil at a lower price than that offered by **CONTRACTOR** in such negotiations which complies with such laws and regulations, but in any event, the **CONTRACTOR** shall have no recourse, other than those specified herein.

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

SECTION 15. PERMITS AND RESPONSIBILITIES

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

SECTION 16. FORCE MAJEURE

No failure or omission by either party to carry out or to observe any of the terms, provisions or conditions of the Contract shall, except in relation to obligations to make payments under the Contract, give rise to any claim by one party against the party in question or be deemed to be a breach of the Contract if such failure or omission arises from any cause reasonably beyond the control of the party, including but without prejudice to the generality of the foregoing:

a. War, etc. War, hostilities, acts of public enemy or belligerents, sabotage, blockade, revolution, insurrection, riot or disorder;

b. Restraints. Arrest or restraint of princes, rulers or peoples;

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c. Confiscation. Expropriation, requisition, confiscation or nationalization;

d. Rationing. Embargoes, export or import restrictions or rationing or allocation, whether imposed by law, decree or regulation or by voluntary cooperation of industry at the insistence or request of any governmental authority or person purporting to act therefore;

e. Regulations. Interference by restriction or onerous regulations imposed by civil or military authorities, whether legal or de facto and whether purporting to act under some constitution, decree, law or otherwise;

f. Acts of God. Acts of God, fire, frost or ice, earthquake, storm, lightning, tide, tidal wave, or peril of the sea, accident of navigation or breakdown or injury of vessels;

g. Loss for Tankers. Loss of tanker tonnage due to sinking by belligerents or to governmental taking whether or not by formal requisition;

h. Accidents. Accidents to or adjuncts of shipping navigation;

i. Strikes. Epidemics, quarantine, strikes or combination of workmen, lockouts, or other labor disturbances;

j. Explosions. Explosion, accidents by fire or otherwise to wells, pipes, storage facilities, refineries, installations, machinery;

k. Taking by Government. Unavailability of fuel because of the election of the government of the country of its origin to take royalty product in kind;

l. Other Events. Any event, matter or thing wherever occurring and whether or not of the same class or kind as those set forth, which shall not be reasonably within the control and without the fault or negligence of the party affected thereby.

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

SECTION 17. NOTICE TO OTHER PARTY

Either party whose obligations may be affected by any of the forces or causes set out in **Section 16**, above, shall promptly notify the other party in writing, giving full particulars thereof as soon as possible

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

SECTION 18. PAYMENT REQUIRED

Notwithstanding the provisions of **Section 16**, above, **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 19. PRORATION OR EQUITABLE ALLOCATION

If any of the events enumerated in **Section 16**, above, 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 near total dependence on fuel oil. **CONTRACTOR** shall also seek an alternative source of fuel oil to fulfill its contractual obligations.

SECTION 20. ALTERNATE SUPPLY

CONTRACTOR reserves the right to supply Fuel Oil meeting **GPA** specifications from any alternate 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 4** above.

CONTRACTOR must provide **GPA** at least five (5) days prior notice of its inability to supply and/or deliver fuel to **GPA**.

In the event **CONTRACTOR** is unable to fulfill **GPA**'s needs under this Contract as a result of **Section 16**, above, or if there is a sudden, unexpected increase in fuel demand that **CONTRACTOR** will be unable to supply and/or deliver fuel at the time needed, **CONTRACTOR** shall seek an alternative source for the supply and/or delivery of fuel oil so long as such condition shall exist.

In the event **CONTRACTOR** is unable to fulfill its obligations under this Contract as a result of any

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negligence on part of the **CONTRACTOR**, **GPA** may at its sole discretion seek an alternative source of fuel oil so long as such condition of negligence shall exist. If the cost of fuel during such period of negligence shall exceed the Contract price as provided in Section 4, the **CONTRACTOR** shall be liable to **GPA** for the difference.

SECTION 21. RESUMPTION OF PERFORMANCE

If **CONTRACTOR** is prevented from delivering or **GPA** is prevented from receiving all or any fuel to be sold under the Contract for the reasons which fall within the provisions of **Section 16**, above, then the party so prevented shall, as to the remainder of the fuel not affected thereby, promptly resume performance of the Contract. No curtailment or suspension of deliveries or payment under the causes listed in **Section 16**, above, shall operate to extend the term of or terminate the Contract unless the occurrence of force majeure will materially impair, for an indefinite period of time, the parties' ability to perform the Contract.

SECTION 22. GOVERNING LAW AND DISPUTES

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

This CONTRACT shall not be construed to confer any benefit on any person not being a party to this Contract not shall it provide any rights to such person to enforce any of its provisions. The provisions of the English Contracts (Rights of Third Parties) Act 1999 are expressly excluded.

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

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

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

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

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

CONTRACTOR shall comply with **GPA**'s decision and proceed diligently with performance of this Contract pending final resolution by the Superior Court of Guam of any controversy arising under, or by virtue of, this Contract, except where **CONTRACTOR** claims a material breach of this Contract by **GPA**. However, if **GPA** determines in writing that continuation of services under this Contract is essential to the public's health or safety, then **CONTRACTOR** shall proceed diligently with performance of the Contract notwithstanding any claim of material breach by **GPA**.

SECTION 23. CONTRACTOR'S INSURANCE

CONTRACTOR shall not commence work under this Contract until it 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 its subcontract until all similar insurance required of the Subcontractor has been so obtained and approved.

The **CONTRACTOR** shall provide a copy of their Insurance Policy to **GPA** within the period prescribed by **GPA**. All updates or revisions after contract commencement shall also be forwarded to **GPA**.

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Failure on the part of the **CONTRACTOR** to provide the required documents and/or to enter into a contract with **GPA** shall be sufficient grounds for the annulment of the award. **GPA** may determine the bidder to be non-responsive to the bid, and may proceed with sending a Notice of Intent to Award to the next most qualified BIDDER.

A. 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 including the Territory of Guam 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 $1,000,000 with an insurance company authorized to write such insurance in all states or territories including the Territory of Guam 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. This coverage shall be on a primary and non-contributory basis.

B. COMMERCIAL GENERAL LIABILTY:

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:

Bodily Injury Limits:	$ 1,000,000 Each Person
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:

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i. The property damage coverage shall include a Broad Form Property Damage Endorsement.
ii. Contractual Liability coverage shall be included.
iii. Protective Liability coverage shall be included to protect the **CONTRACTOR** against claims arising out of operations performed by its Subcontractors.
iv. Products Liability and/or Completed Operations coverage shall be included.
v. **GPA** shall be an additional insured on the Commercial General Liability policy.
vi. This coverage shall be on a primary and non-contributory basis.
vii. **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**.
viii. Policy must have MCS 90 endorsement.

C. 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

Policy must have MCS 90 endorsement.

This coverage shall be on a primary and non-contributory basis.

D. 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.

This coverage shall be on a primary and non-contributory basis.

E. EXCESS LIABILITY

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Excess Liability with limits of $5,000,000 over the General Liability, Auto Liability, and workers compensation policies. **GPA** shall be named as an additional insured. **CONTRACTOR** shall grant Waiver of Subrogation in favor of **GPA**. This coverage shall be on a primary and non-contributory basis and Policy must have MCS 90 endorsement.

Cancellation Clause:

All policies above shall contain the following Cancellation clause:

The insurance company shall notify in writing the **GPA** (insured) a minimum of 60 days prior to any material changes or cancellation of coverage.

GPA will waive the Excess Liability requirement provided:

1. The **CONTRACTOR** complies with the requirement for the Commercial General Liability under Paragraph B above (including the extensions of coverage required under Paragraph B), and the Property Damage Limits in Subparagraph 1 is increased to $6,000,000 for each occurrence.
2. The policy for the Commercial General Liability and the Automobile Liability under Paragraphs B and C above, carries the MCS90 endorsement.

F. CERTIFICATE OF INSURANCE:

The **CONTRACTOR** shall furnish **GPA** with two (2) copies of a Certificate of Insurance evidencing policies required in Paragraphs A, B, C, D, and E above. Such certificates shall specifically indicate that the Commercial General Liability Insurance includes all extensions of coverage required in Paragraph B., Subparagraph 2. above. Such certificate shall specifically state that the insurance company or companies issuing such insurance policies shall give **GPA** at least sixty (60) 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**.

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G. SUBCONTRACTOR'S INSURANCE:

The **CONTRACTOR** shall require each of its Subcontractors to take out and maintain during the life of its Subcontract, the same insurance coverage required of the **CONTRACTOR** under Paragraphs A, B, C, D, and E above, including the extensions of coverage required under Paragraph B., 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 B. above. The **CONTRACTOR** shall furnish one (1) copy of the certificate to **GPA**.

H. 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 of Guam and 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.

SECTION 24. INDEMNITY

CONTRACTOR shall indemnify and hold **GPA** harmless from all damages to persons or property or to receiving facilities and delivery facilities, regardless of ownership, including the cost of enforcement of the indemnity, actually and proximately caused by **CONTRACTOR** or its agents in making deliveries hereunder. **CONTRACTOR** shall be responsible for cleaning up any oil spillage caused by it or its agent or **CONTRACTOR**s 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.

SECTION 25. TRANSPORTATION

CONTRACTOR shall arrange for the transportation of the Fuel Oil to the GPA storage facilities.
All risk of loss, cost and liabilities prior to the time of passage of title of the Fuel Oil shall be on the **CONTRACTOR**.

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

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SECTION 26. FAILURE TO SUPPLY

If the **CONTRACTOR** refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure the timely delivery of fuel oil supply or commits any other substantial breach or non-performance of this Contract, **CONTRACTOR** must provide **GPA** at least five (5) days prior notice of its inability to supply and/or deliver fuel to **GPA**. **GPA** reserves the right to procure fuel oil supply from another source immediately upon issuance of such notification or whenever it deems appropriate for a period to be determined solely by **GPA**. If the cost of fuel supply and/or delivery during such period shall exceed the Contract price as provided in Section 4, the **CONTRACTOR** shall reimburse **GPA** for the difference and other damages, which may be taken from the Performance Bond or applied as a deduction to payments due from current and future invoices.

If not cured within THIRTY (30) days of the date of notification, **GPA** may terminate the Contract in whole or such part of the Contract as to which there has been a delay or a failure to properly perform. In the event of termination in whole or in part, **GPA** reserves the right to procure fuel oil supply from another source.

SECTION 27. FAILURE TO PAY

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

(a) Terminate the Contract forthwith or forthwith suspend delivery under the contract until further notice, on notifying **GPA** orally or by notice in writing; or

(b) Continue to supply fuel oil and bring suit in the Superior Court of Guam for amounts past due and as they become due.

SECTION 28. 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

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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 THRITY (30) days written notice.

SECTION 29. LIQUIDATED DAMAGES CLAUSES

Quality Outside Contractual Specifications

In the event that any fuel, according to the analysis results has one or more quality characteristics outside the contractual specifications set in **Schedule A**, then in addition to any other rights or remedies available to the **GPA** under this contract liquidated damages will be imposed according to the following:

a. If the bottom sediment and water exceed the specification limit, then a price reduction shall be made for all water and non-petroleum sediment in excess of maximums specified in **Schedule A** multiplied by the Bill of Lading Quantity.
b. If the heating value is less than the specification limit, then there will be a price reduction calculated as the ratio of the Out-of- Specification heating value and the Guaranteed Heating Value specified in **Schedule A**, multiplied by the Bill of Lading Quantity.

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

It is expressly agreed that the present liquidated damages clauses shall be imposed whenever damages were suffered by the **GPA** due to the delay in delivering the fuel and/or fuel quality outside contractual specifications, and that the **GPA** reserves the right to claim the amount of indemnification for every direct damage suffered by **GPA** due to **CONTRACTOR**'s non-contractual actions or omissions. If during the period of this contract the **GPA** is forced to purchase fuel oil in order to maintain the **GPA**'s Power Stations on full commercial load as a result of failure on the part of the **CONTRACTOR** to supply and/or deliver fuel oil in accordance with the terms of this contract (save for events of Force Majeure) any additional cost borne by the **GPA** over and above the price provided for in this Contract, **CONTRACTOR** will be liable to refund **GPA** either by payment of the **CONTRACTOR** or by way of reduction from **GPA**

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debts to the **CONTRACTOR** or deduction from the **CONTRACTOR's** Good Performance Bond of the Contract, or partially from both.

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

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

SECTION 30. DEFAULT

If the PARTY refuses or fails to perform any of their obligations under this agreement, non-breaching PARTY shall notify the PARTY either by e-mail or in writing within thirty (30) days of the breach. If the PARTY does not remedy the breach within thirty (30) days after the date of notification, non-breaching PARTY may by giving notice to the other PARTY terminate the Agreement in whole or suspend taking of delivery under the Contract.

In the event of partial termination or suspension under this provision, **GPA** reserves the right to procure fuel supply from another source upon notification to **CONTRACTOR** either by e-mail or in writing. Fuel to be procured shall be at the prevailing market price at the time of partial termination or suspension.

The **CONTRACTOR** shall be liable for the difference between the contract price and the prevailing market price at the time of termination.

SECTION 31. ATTORNEYS FEES

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

SECTION 32. TERMINATION FOR CONVENIENCE

(a) **Termination**.

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The delivery of fuel oil supply under this Contract may be terminated by **GPA** in accordance with this clause in whole, or from time to time in part.

Any such termination shall be effected by delivery to the **CONTRACTOR** of a written Notice of Termination specifying the extent to which supply of fuel oil under the Contract is terminated.

In the case of termination of this Contract, **GPA** shall reimburse the **CONTRACTOR** of all the expenses related to the period of the Performance Bond that were not used.

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

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

(c) **Right to Supplies.**

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

(d) **Compensation.**

(1) The **CONTRACTOR** shall submit a termination claim specifying the amounts due because of the termination for convenience. If the **CONTRACTOR** fails to file a termination claim within ONE (1) year from effective date of termination, **GPA** may pay the **CONTRACTOR**, if at all, an amount set in accordance with subparagraph (3) of this paragraph.

(2) **GPA** and the **CONTRACTOR** may agree to a settlement provided the **CONTRACTOR** has filed a termination claim supported by cost or pricing data to the extent required by Section 3-403

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(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 oil 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

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manufacturing materials under the Uniform Commercial Code.

SECTION 33. REMEDIES

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.

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

SECTION 34. COVENANT AGAINST CONTIGENT FEES

In accordance with 5 GCA § 5631(a) and 2 GAR, Div. 4 § 11108(a)(3), **CONTRACTOR** represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for **CONTRACTOR**, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONTRACTOR**, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, **GPA** shall have the right to annul this Contract without liability, or in its discretion to deduct from the Contract Price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 35. 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:

GPA: General Manager

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

CONTRACTOR: _____

_____

_____

_____

SECTION 36. 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 37. ASSIGNMENT

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

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

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SECTION 38. TIME

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

SECTION 39. AMENDMENT AND WAIVER

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

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 40. DESCRIPTIVE HEADINGS

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

SECTION 41. 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.

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SECTION 42. 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 43. 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 44. PARTIAL INVALIDITY

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

SECTION 45. 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.

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(b) The **CONTRACTOR** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONTRACTOR**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, political opinion or affiliation, or national origin.

SECTION 46. PROHIBITION AGAINST GRATUITIES, KICKBACKS, AND FAVORS TO THE TERRITORY

Title 5 GCA § 5630(c) and 2 GAR, Div. 4 § 11107(3) prohibits **CONTRACTOR** from gratuities, kickbacks, and favors to **GPA** and **CONTRACTOR** represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities and kickbacks set forth in the Guam Procurement Laws and Regulations.

SECTION 47. PROHIBITION AGAINST EMPLOYMENT OF SEX OFFENDERS

Title 5 GCA § 5253(b) restricts **CONTRACTOR** against employing convicted sex offenders from working at Government of Guam venues. **CONTRACTOR** warranties that no person providing services on behalf of **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. **CONTRACTOR** warranties that if any person providing services on behalf of **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, such person will be immediately removed from working at **CONTRACTOR** and **GPA**'s venues and that **GPA** shall be informed of such within twenty-four (24) hours of such conviction.

SECTION 48. WAGES AND BENEFITS

CONTRACTOR has read and understands the provisions of 5 GCA § 5801 and § 5802 governing wage and benefits determination. **CONTRACTOR** acknowledges the obligation to pay its employees on Guam who are delivering services to Guam in accordance with the U.S. DOL Wages and Benefits Determination as stated in 5 GCA §§ 5801 and 5802. A copy of the most recent U.S. DOL Wages and Benefits Determination for the Guam Region is attached hereto and incorporated by reference to this Contract. **CONTRACTOR** shall apply the Wage and Benefits Determination for Guam promulgated by

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the U.S. Department of Labor on a date most recent to the renewal date of the Contract in accordance with 5 GCA §§ 5801 and 5802.

SECTION 49. REPRESENTATION REGARDING ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES AND FORMER GOVERNMENT EMPLOYEES

In accordance with 2 GAR, Div. 4 § 11103(b), **CONTRACTOR** represents that it has not knowingly influenced and promises that it will not knowingly influence a government employee to breach any of the ethical standards set forth in 5 GCA Chapter 5 Article 11 (Ethics in Public Contracting) of the Guam Procurement Act and in Chapter 11 of the Guam Procurement Regulations.

SECTION 50. PROHIBITION AGAINST CONTINGENT FEES

In accordance with 5 GCA § 5631(a) and 2 GAR, Div. 4 § 11108(a)(3), **CONTRACTOR** represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for **CONTRACTOR**, to solicit or secure this Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for **CONTRACTOR**, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of making of this Contract. For breach or violation of this warranty, **GPA** shall have the right to annul this Contract without liability, or in its discretion to deduct from the Contract Price of consideration or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

SECTION 51. CONTRACT BINDING EFFECT

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

This Contract is binding upon the **CONTRACTOR** only if **CONTRACTOR** has been awarded the Contract in response to the **IFB-GPA-050-24**. 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.

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For the **Guam Power Authority** (**GPA**):

12/20/2024

John M. Benavente, P.E.
General Manager

DATE

For **CONTRACTOR (Mobil Oil Guam, Inc.)**:
(Company Seal)

12/13/2024

Pongsathorn Visutseth
President

DATE

APPROVED AS TO FORM:

12/20/2024

By: _____

Marianne Woloschuk
Legal Counsel
Guam Power Authority

DATE

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PERFORMANCE AND PAYMENT BONDS

KNOW ALL MEN BY THESE PRESENTS that _____

_____

(Name of **CONTRACTOR**)

herein after called the **CONTRACTOR** and _____

_____

_____

(Name of Surety)

a corporation duly organized under the laws of the State of _____

_____

(hereafter referred to as: "Surety") authorized to transact business in Guam as Surety, are held and firmly bound unto the Guam Power Authority, as obligee, for use and benefit of claimants as herein below defined, in the amount of _____

_____Dollars (US$_____) for the payment whereof the **CONTRACTOR** and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the **CONTRACTOR** has by written agreement dated _____, 20___, entered into a Contract with the Guam Power Authority for the **Supply of Diesel Fuel Oil No.2 to the Various GPA Plant Sites** in accordance with the Specifications prepared by the Guam Power Authority, which Contract is by reference made a part hereof, and is hereafter referred to as the Contract.

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

A. The Surety hereby waives notice of any alteration or extension of the time made by the Guam Power Authority provided the same is within the scope of the Contract.

B. Whenever **CONTRACTOR** shall be and is declared to be in default under the Contract by the Guam Power Authority, and the Guam Power Authority has performed its Contract obligations, the Surety may promptly remedy the default or shall promptly:

1. Complete the Contract in accordance with its terms and conditions; or
2. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Guam Power Authority and the Surety of the lowest responsive, responsible bidder, arrange for a Contract between such bidder and the Authority, and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less than balance of the Contract price, but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the contract price", as used in this paragraph shall mean the total amount payable by the Guam Power Authority to **CONTRACTOR**

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under the Contract and any amendments thereto, less the amount properly paid by the Guam Power Authority to **CONTRACTOR**. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Guam Power Authority or successors of the Authority.

C. A claimant is defined as one having a direct contract with the **CONTRACTOR**, or with a sub-**CONTRACTOR** of the **CONTRACTOR** for labor, material, or both, used or reasonably required for use in the performance of the Contract labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

D. The above-named **CONTRACTOR** and Surety hereby jointly and severally agree with the Guam Power Authority that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) calendar days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Guam Power Authority shall not be liable for the payment of any costs or expenses of any such suit.

E. No suit or action shall be commenced hereunder by a claimant:

1. Unless claimant, other than one having a direct contract with the **CONTRACTOR**, shall have given written notice to any two of the following:

   The **CONTRACTOR**, the Guam Power Authority, or the Surety above named, within ninety (90) calendar days after such claimant did or performed that last of the work or

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labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be personally served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the **CONTRACTOR** at any place the principal maintains an office or conducts its business.

2. After the expiration of one (1) year following the date on which the last of the labor was performed or material was supplied by the party bringing suit.

3. Other than in a court of competent jurisdiction in and for Guam.

F. The amount of the payment bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

SIGNED AND SEALED THIS _____ day of _____ 20___ .

IN THE PRESENCE OF:

(Note: If the Principal are Partners, each must execute the Bond)

_____ _____

(WITNESS) (**CONTRACTOR**) (SEAL)

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_____	_____
(TITLE)	
_____	_____
(MAJOR OFFICER OF SURETY)	(MAJOR OFFICER OF SURETY)
_____	_____
(TITLE)	(TITLE)
	_____

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SCHEDULE A: PRODUCT QUALITY SPECIFICATION

DIESEL FUEL OIL NO. 2

DESCRIPTION	ASTM TEST METHOD	UNIT OF MEASURE	LIMITS	
			Minimum	Maximum
Flash Point	D93	deg C	60	
Bottom Sediment & Water	D2709	vol %		0.05
Distillation Temp, 10% recovered	D86	degC	180	270
Distillation Temp, 50% recovered	D86	degC	230	310
Distillation Temp, 90% recovered	D86	degC	280	360
Distillation Temp, 95% recovered	D86	degC	300	370
Kinematic Viscosity	D445	mm^2/s at 40 degC	1.9	4.1
Total Aromatic Hydrocarbons	D6591 or IP391	wt%		30
Tricyclic and higher Aromatic Hydrocarbons	D6591 or IP391	wt%		1
Ash	D482	wt%		0.01
Sulfur	D5453 or D7039	ppmw		10
Sulfur Mercaptan	D3227	ppmw		3
Copper Strip Corrosion Rating (3hrs min at 50oC)	D130			No. 1
Cetane Index	D976		46	
Carbon Residue on 10% distillation residue	D189 or D524 or D4530 or D6371	wt%		0.2
Lubricity, HFRR @ 60oC	D6079	micron		400
Conductivity	D2624 or D4308	pS/m	100	600
Density @ 15oC	D4052 or D1298	kg/m3	820	850
Gravity, API @ 60oF	D1298 or D4052		35	41
Color	D1500 or D6045			2.0
Hydrogen Sulfide in Liquid	IP 570A	mg/kg		2.0
Strong Acid No.	D974	mg KOH/g		Nil
Total Acid No.	D974	mg KOH/g		0.2
Odour	Indirect			Merchantable
Stability (Oxidation), 16Hrs	D2274	mg/L		20
Appearance @ ambient temp	D4176			Clear, bright and free from particulates and water
Haze Rating	D4176			1
Particulate Contamination	D6217	mg/L		8

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Water content	D6304	mg/kg		100
Filter Blocking Tendency (FBT)	D2068 or IP387			1.35
Fatty Acid Methyl Ester (FAME)	D7371-14 or EN14078	vol%		0.1
Guaranteed Heating Value (HHV)	D240	MMBTU/bbl	5.70	
Static Dissipation Additives (Stadis 450)	Declared			Report
Lubricity Additive	Declared			Report
Biodiesel Content	Declared			NIL
Virgin Vegetable & Animal Oils	Declared			NIL
Unhydrotreated Cracked Components	Declared			NIL

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

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SCHEDULE B: ESTIMATED ANNUAL FUEL OIL REQUIREMENTS

This information is provided as reference material only. Although every attempt has been made to ensure its accuracy, **GPA** makes no guarantees that these projected quantities will be achieved but they may be exceeded. **GPA** expressly disclaims any liability whatsoever arising from reliance or non-reliance of the data forecast provided.

SITE LOCATION 1	CY 2025 Gallons	CY 2026 Gallons	CY 2027 Gallons
Yigo CT	3,000,000-5,000,000	500,000-1,500,000	500,000-1,500,000
Yigo Diesel	9,000,000-12,000,000	500,000-1,500,000	500,000-1,500,000
Total	**12,000,000-17,000,000**	**1,000,000-3,000,000**	**1,000,000-3,000,000**

SITE LOCATION 2	CY 2025 Gallons	CY 2026 Gallons	CY 2027 Gallons
Dededo CT	9,000,000-12,000,000	1,000,000-3,000,000	1,000,000-3,000,000
Macheche CT	3,000,000-7,000,000	500,000-1,500,000	500,000-1,500,000
Total	**12,000,000-19,000,000**	**1,500,000-4,500,000**	**1,500,000-4,500,000**

SITE LOCATION 3	CY 2025 Gallons	CY 2026 Gallons	CY 2027 Gallons
Cabras 1&2	100,000-200,000	100,000-200,000	100,000-200,000
Piti 7	2,000,000-4,000,000	1,000,000-2,000,000	1,000,000-2,000,000
Total	**2,100,000-4,200,000**	**1,100,000-2,200,000**	**1,100,000-2,200,000**

SITE LOCATION 4	CY 2025 Gallons	CY 2026 Gallons	CY 2027 Gallons
Manenggon	100,000-500,000	100,000-300,000	100,000-300,000
Talofofo Diesel	500,000-1,000,000	200,000-500,000	200,000-500,000
Total	**600,000-1,500,000**	**300,000-800,000**	**300,000-800,000**

GPA has installed a new pipeline network to some of the plants for transferring Diesel Fuel Oil No.2 primarily from the GPA bulk storage facility(ies). In the event that such pipeline or facility is not available or becomes unavailable, Diesel Fuel Oil must be supplied and delivered by the **CONTRACTOR** on an "As Needed" basis from the **CONTRACTOR** storage facility to the various GPA plant sites covered in this Contract.

GPA reserves the right to nominate quantities each month and will not guarantee equal amounts of volume every month. Fuel oil deliveries may be low or not needed one month and increase the next month. Maximum daily fuel consumption per plant is provided in Schedule C. Historically, **GPA** has consumed as little as 700 barrels per day of diesel and as high as 6,000 barrels a day of diesel. Usage levels are dependent on unit availability.

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SCHEDULE C : PLANT CONSUMPTION AT MAXIMUM CAPACITIES

Maximum Fuel Consumption		gals/day	bbls/day
SITE LOCATION 1	Yigo CT	45,361	1,080
	Yigo Diesel	70,855	1,687
SITE LOCATION 2	Dededo CT	110,460	2,630
	Macheche CT	50,526	1,203
SITE LOCATION 3	Cabras 1&2 and Piti 7	104,803	2,495
SITE LOCATION 4	Manenngon	14,728	351
	Talofofo	17,271	411
TOTAL		**414,004**	**9,857**

The above information is provided for reference purposes only.

2-baseload outages for 10-day consecutive period is approximately 252,000 gallons per day (~6,000 bbls/day).

SCHEDULE D: HISTORICAL PLANT CONSUMPTION

Per Power Plant	FY 2019 Gallons	FY 2020 Gallons	FY 2021 Gallons	FY 2022 Gallons	FY 2023 Gallons
Yigo CT	4,511,682	4,295,508	3,333,582	8,634,948	4,763,934
Yigo Diesel	11,598,636	9,704,478	5,744,550	4,738,902	4,915,890
Dededo CT	1,596,462	703,878	4,906,104	12,242,958	11,190,312
Macheche CT	4,921,140	4,893,546	6,601,392	3,533,166	3,269,364
Piti 7	5,377,596	3,403,806	6,844,320	16,454,298	14,372,484
Baseloads	75,180	27,426	65,394	66,528	111,720
Manenggon	45,024	7,854	18,690	167,622	373,758
Talofofo Diesel	653,688	80,850	597,324	408,870	409,962
TOTAL	**28,779,408**	**23,117,346**	**28,111,356**	**46,247,292**	**39,407,424**

Per Site Location	FY 2019 Gallons	FY 2020 Gallons	FY 2021 Gallons	FY 2022 Gallons	FY 2023 Gallons
1. Yigo CT & Yigo Diesel	16,110,318	13,999,986	9,078,132	13,373,850	9,679,824
2. Dededo CT & Macheche CT	6,517,602	5,597,424	11,507,496	15,776,124	14,459,676
3. Cabras 1&2 and Piti 7	5,452,776	3,431,232	6,909,714	16,520,826	14,484,204
4. Manengon & Talofofo	698,712	88,704	616,014	576,492	783,720
TOTAL	**28,779,408**	**23,117,346**	**28,111,356**	**46,247,292**	**39,407,424**