

**AMENDMENT NO. 5  
TO ENERGY CONVERSION AGREEMENT**

This AMENDMENT NO. 5 TO ENERGY CONVERSION AGREEMENT ("the Amendment No. 5 to Energy Conversion Agreement" or "ECA No. 5") is made and entered into as of this \_\_\_\_ day of December 2023 by and between GUAM POWER AUTHORITY ("GPA"), a public corporation and autonomous instrumentality of the Government of Guam, acting through its Governing Board of Directors, and MARIANAS ENERGY COMPANY LLC ("MEC" or "Owner"), a limited liability company duly organized and existing under the laws of the State of Delaware and registered to do business in Guam (GPA and MEC referred to herein collectively as the "Parties").

**RECITALS**

WHEREAS, GPA and MEC (as successor and assignee to the rights, title and interest of Enron Development Piti Corp.) are parties to an Energy Conversion Agreement dated as of September 30, 1992 (as amended, the "Energy Conversion Agreement" or "ECA"), pursuant to which GPA (in its capacity as off-taker) has agreed to purchase from MEC (in its capacity as power producer) and MEC has agreed to sell to GPA, energy and capacity generated by the Power Station, upon the terms and conditions set forth therein;

WHEREAS, on May 31, 2018 the Guam Public Utilities Commission issued an Order in In the Matter of the Application of the Guam Power Authority to Approve the Piti 8 & 9 Contract Extension with Marianas Energy Company, GPA Docket 18-13, approved an initial five-year contract extension of the ECA for MEC to continue management and operation of Piti 8 & 9 power plants beyond January 2019 and further approving transfer of the power plants' ownership from MEC to GPA effective January 2019;

WHEREAS, on March 30, 2023 the Guam Public Utilities Commission issued an Order in In the Matter of the Application of the Guam Power Authority to Approve the Piti 8 & 9 Contract Extension with Marianas Energy Company, GPA Docket 23-11, approving a second five-year contract extension of the ECA for MEC to continue management and operation of Piti 8 & 9 power plants from January 2024 to January 2029.

WHEREAS, GPA and MEC desire to amend the Energy Conversion Agreement on the terms and conditions contained herein;

NOW, THEREFORE, in consideration of the mutual agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Section 1. Definitions and Form of Amendments.**

Unless the context clearly requires otherwise, capitalized terms used herein but not otherwise defined shall have the meaning provided in the Energy Conversion Agreement. Unless otherwise

specified, clause references are to clauses of the Energy Conversion Agreement. Amendments to the ECA are italicized and underscored.

## **Section 2. Amendments Concerning Second Extension of ECA**

2.1 The definition of "Co-operation Period" in Clause 1.1 of the ECA is hereby amended as follows:

**"Co-operation Period"** means the period of twenty (20) years from the later of the Target Completion Date and the Completion Date, as the same may be extended from time to time pursuant to the terms hereof. The Co-operation Period shall terminate on January 29, 2019 at 12:00 noon, unless sooner terminated. The period from and including January 29, 2019 at 12:01 pm to and including January 29, 2024 is referred to as the "Contract Extension period". The period from and including January 29, 2024 at 12:01 p.m. to and including January 29, 2029 is referred to as the "Second Contract Extension Period".

2.2 Clause 2.8 is hereby amended as follows:

"From the date hereof until the Transfer Date (as amended and defined in the ECA Amendment No. 4), Owner shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site or used in connection with the Power Station which have been supplied by it or at its cost and it shall operate and manage the Power Station for the purpose of converting fuel of GPA into electricity. From and after the Transfer Date, Owner shall continue to operate and manage the Power Station for the purpose of converting fuel of GPA into electricity for a second period of five (5) years from January 29, 2024 at 12:01 p.m. to January 29, 2029, including any further extensions as mutually agreed in writing by the Parties.

## **Section 3. Further Amendments.**

The following amendments to the Energy Conversion Agreement shall take effect and apply on January 30, 2024 and thereafter during the Second Contract Extension Period but shall not affect any right or obligation accrued or arising prior to the Second Contract Extension Period.

3.1 Clause 1.1 of the ECA (as amended and defined in ECA No. 4) is hereby amended, as follows:

**"Recapitalization Fee"** is hereby deleted in its entirety.

3.2 Clause 1.1 of the ECA (as amended and defined in ECA No. 4) is hereby amended to add the following:

Furthermore, CIP/PIP projects and Major Overhaul cost ("MOH") shall be identified on an annual basis by Owner and submitted to GPA, no later than 150 days before the following fiscal year, for review and approval by GPA.

3.3 The definition of "Fixed O&M Fees" in Clause 1.1 of the ECA is hereby respectively amended as follows:

**"Fixed O&M Fees"** means the fees payable to Owner for the portion of operating expenses that are fixed (subject to adjustment for inflation pursuant to the Eighth Schedule) in accordance with Clause 11 as such fees are further defined in the Eighth Schedule to Energy Conversion Agreement *as amended by ECA Amendment No. 5*; provided, however, that the following fees shall be charged by Owner to GPA on a pass-through basis and shall be billed by Owner to GPA at actual cost: (i) the property, business interruption and sabotage & terrorism insurance premiums; (ii) the cost of cylinder lube oil, *(iii) emulsifier, and (iv) any import tax, freight, and other fees on the cylinder lube oil and/or emulsifier if applicable.*"

3.4 Clause 11.1 of the ECA is hereby amended to add as follows:

*In respect to the annual approved CIP/PIP and MOH projects, Owner will deliver to GPA an invoice upon completion of each individual project. Invoice shall include all actual costs, 10% EPC O&M Fee and 4% cost of money.*

3.5 Clause 11.2 of the ECA is hereby amended to add as follows:

The following fees shall be charged by Owner to GPA on a pass-through basis and shall be billed by Owner to GPA at actual cost in addition to any Fixed O&M Fees and any Variable O&M Fees: (i) the cost of water, (ii) property, business interruption and sabotage & terrorism insurance premiums, (iii) the cost of cylinder lube oil, *(iv) emulsifier, and (v) any import tax, freight, and other fees on the cylinder lube oil and/or emulsifier, if applicable.*

3.6 The definition of "Downtime" per the Sixth Schedule, *as amended and defined in ECA Amendment No. 4*, is hereby amended to include the following:

"Downtime" also means any other hours that the Contract Capacity is unavailable as a consequence of GPA's failure to perform any of its obligations under this Agreement, unavailability of the Transmission Line or the GPA grid, *or due to Force Majeure and downtime hours related to CIP/PIP and MOH as provided in Clause 3.16 of the ECA Amendment No. 4.*

3.7 The Clause 4.1, *(as amended and defined in ECA Amendment No. 4)* to Schedule Eight of the ECA, *is deleted in its entirety.*

3.8 The Clauses 8.11, 8.12, 8.13 and 8.14 *as amended and defined in ECA No. 4*, are hereby amended as follows:

"8.11 Owner shall perform, during the Contract Extension Period, CIP/PIP with respect to the Power Station in accordance *with pre-approved CIP/PIP and MOH*

identified on an annual basis by Owner and approved by GPA at the costs respectively provided for such CIP/PIP and MOH. Such cost (inclusive of all fees) shall be paid to Owner within 30 days upon submittal of invoices to GPA. Such amounts are subject to adjustment as provided in Clauses 8.12 and 8.13.

“8.12 Cost of approved CIP/PIP and MOH, inclusive of actual cost and all applicable fees, shall be paid to Owner within 30 days upon submittal of invoices to GPA.

“8.13 Cost of approved CIP/PIP and MOH, inclusive of actual cost and all applicable fees, shall be paid to Owner within 30 days upon submittal of invoices to GPA.

“8.14 Sixty days prior to, January 29 of the following year during the Contract Extension Period, the Parties shall meet to determine the projects scheduled for implementation each year.

- 3.9 The sample calculation in the Fifteenth Schedule of the ECA, as amended and defined in ECA Amendment No. 4, is hereby amended as follows:

Data and Assumptions:

Billing Period = January 2024

Contracted Capacity (CC) = 85.560 kW

I. Normal Condition Monthly Billing

- A. Recapitalization Fee: is hereby deleted in its entirety and replaced as follows:

- A. ‘CIP/PIP and MOH Cost’ identified and approved on an annual basis, inclusive of all fees below, shall be billed upon completion of individual CIP/PIP and MOH projects and submitted to GPA monthly or as completed, whichever comes first.

Note: EPC O&M Fee means the total amount equal to ten percent (10%) of CIP/PIP cost over \$10,000.00 and Major Maintenance Cost. Cost of Money Fee means the total amount equal to four percent (4%) of CIP/PIP cost over \$10,000.00 and Major Maintenance Cost.

E. Emulsifier Expense pass-through:

Owner shall be responsible for the procurement of Emulsifier. Emulsifier cost shall be a full pass-through cost to GPA based on the actual procurement cost of Owner, subject to price index adjustments, with similar provisions as Cylinder Lube Oil. GPA shall provide tax exempt status to Owner.

Emulsifier shall be billed, inclusive of all cost, and submitted to GPA

monthly or upon confirmation of delivery to plant, whichever is first.

III. Calculation of annual Availability Factor

Contracted Capacity for previous Contract Year = 85,560 kW

IV. Heat Rate Penalty calculations:

Guaranteed Heat Rate, after the ULSD Conversion = 8,139 BTU/kWh

**Section 4. Miscellaneous.**

4.1 Integration. This Amendment No. 5 contains the entire agreement between the parties and supersedes all prior agreements, promises, representations, understandings, negotiations, and communications, whether oral or in writing between the parties relating to the subject matter hereof.

4.2 Effect on Energy Conversion Agreement and Amendments Thereto. Except as otherwise expressly provided above, the terms and conditions of the Energy Conversion Agreement and any amendments thereto shall remain in full force and effect and shall remain unaffected and unimpaired.

**MARIANAS ENERGY COMPANY LLC**

By: Rino Manzano  
RINO T. MANZANO  
GENERAL MANAGER  
MARIANAS ENERGY COMPANY LLC

Date: 12/19/2023

**GUAM POWER AUTHORITY**

By: John M. Benavente  
JOHN M. BENAVENTE, P.E.  
GENERAL MANAGER  
GUAM POWER AUTHORITY

Date: 12/19/2023

**APPROVED AS TO FORM:**

By: M. Wołoschuk 12/19/23  
MARIANNE WOLOSCHUK  
LEGAL COUNSEL  
GUAM POWER AUTHORITY  
Date