

**PERFORMANCE MANAGEMENT CONTRACT
FOR THE GUAM POWER AUTHORITY
CABRAS UNITS #1 & #2
STEAM POWER PLANT**

between

GUAM POWER AUTHORITY

and

**TAIWAN ELECTRICAL AND MECHANICAL
ENGINEERING SERVICES, INC.
(TEMES, INC.)**

OCTOBER 01, 2020

<u>PERFORMANCE MANAGEMENT CONTRACT</u>	1
<u>RECITALS</u>	3
<u>SECTION 1 – DEFINITION OF TERMS</u>	4
<u>SECTION 2 – PURPOSE AND SCOPE OF SERVICES</u>	9
<u>SECTION 3 – CONDITIONS PRECEDENT</u>	10
<u>SECTION 4 – CONTRACT DOCUMENTS</u>	11
<u>SECTION 5 – CONTRACT TERM</u>	13
<u>SECTION 6 – OPERATION OF THE POWER PLANT</u>	13
<u>SECTION 7 – PERSONNEL MANAGEMENT – UTILIZATION OF GPA EMPLOYEES</u>	20
<u>SECTION 8 – SUPPLY OF FUEL</u>	24
<u>SECTION 9 – DUTIES AND RESPONSIBILITIES OF GPA</u>	25
<u>SECTION 10 – COMPENSATION FOR SERVICES</u>	25
<u>SECTION 11 - TERMINATION</u>	29
<u>SECTION 12 – RELATIONSHIP OF THE PARTIES</u>	36
<u>SECTION 13 – OWNERSHIP OF INFORMATION, DATA AND DOCUMENTS</u>	38
<u>SECTION 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION</u>	38
<u>SECTION 15 –ACCESS TO RECORDS AND OTHER REVIEW</u>	39
<u>SECTION 16 - INSURANCE</u>	40
<u>SECTION 17 - INDEMNITY</u>	44
<u>SECTION 18 – FORCE MAJEURE</u>	44
<u>SECTION 19 - WARRANTY</u>	46
<u>SECTION 20 – TESTS AND INSPECTIONS</u>	47
<u>SECTION 21 – DEFECTS IN GOODS AND SERVICES</u>	48
<u>SECTION 22 – CHANGE ORDER</u>	49
<u>SECTION 23 – SUCCESSORS AND ASSIGNMENTS</u>	49
<u>SECTION 24 –REPRESENTATIVES OF GPA</u>	50
<u>SECTION 25 – PROFESSIONAL RELATIONSHIP</u>	50
<u>SECTION 26 – PERFORMANCE BOND</u>	50
<u>SECTION 27 – DISPUTE RESOLUTION</u>	51
<u>SECTION 28 - MISCELLANEOUS</u>	51

PERFORMANCE MANAGEMENT CONTRACT

This Performance Management Contract ("Contract") is made and entered into on the ____ day of _____, 2020 by and between:

CONTRACTOR, Taiwan Electrical and Mechanical Engineering Services, Inc., hereinafter referred to as TEMES, a legal entity duly organized and existing under the laws of the Republic of China and licensed, registered and qualified to do business in Guam with its principal address at 8th Floor, 119, Baozhong Rd., Xindian Dist., New Taipei City 23144, Taiwan R.O.C.;

-and-

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

RECITALS

WHEREAS, GPA desires to efficiently operate and maintain its Cabras #1 and #2 Steam Power Plant; and

WHEREAS, GPA seeks to ensure the reliability and availability of its Cabras #1 and #2 Steam Power Plant in order to meet capacity requirements until the new power plant is commissioned and actively operating; and

WHEREAS, the Consolidated Commission on Utilities has determined that a Performance Management Contract is the preferred option for GPA to ensure continued effective generation outage planning, maintenance, and overall performance of its Cabras #1 and #2 Steam Power Plant; and

WHEREAS, the Guam Public Utilities Commission has, through stipulation, ordered that GPA retain a CONTRACTOR for its Cabras #1 and #2 Steam Power Plant; and

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

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

WHEREAS, **TEMES** is fully willing to provide, and is capable of providing, the management, operations, maintenance and repair services set forth in the IFB and Agreement in accordance with the terms and conditions thereof.

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

SECTION 1 – DEFINITION OF TERMS

In this Agreement and in the Recitals hereto:

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

“Approved As Revised” The words "Approved As Revised," when applied by ENGINEER to Contractor's drawings or documents shall mean that the drawings or documents are approved as defined above, except that the corrections shown are required for the proper interfacing with GPA furnished components or are necessary to be in conformance with the Specification's requirements.

“Cabras 1 & 2 Steam Power Plant” shall mean the steam generator plant consisting of two (2) – 66 megawatt steam turbine generator units, such plant being used for baseload operations. Comprehensive information concerning the plant’s design, historical performance, operation, maintenance activities, future

maintenance, capital requirements and condition assessment are fully set forth in Schedule A of GPA-035-20. The Cabras 1 & 2 Plant Technical Description is fully incorporated herein by reference.

“Change Order” A written instrument to Contractor signed by GPA authorizing an addition, deletion, or revision in the goods or special services, or an adjustment in the purchase order price or the delivery time, issued after the effective date of the Contract Agreement (Agreement).

“Claim” means any dispute or disagreement brought in accordance with the Guam Procurement Law, 5 GCA §5001 et. seq. and the Government Claims Act of Guam, 5 GCA §6001 et. seq. and the procedures thereunder.

“Commencement Date” means October 1, 2020 which CONTRACTOR assumes operational control of GPA’s Cabras Units.

“Completion Date” shall have the meaning given in the Contract, or the last day of any extension of this contract.

“Contractor” means the Performance Management Contractor with whom GPA has entered into the Contract Agreement and shall refer to TEMES.

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

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

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

“Defective” An adjective which when modifying the words Goods or Special Services refers to

Goods or Special Services which are unsatisfactory, faulty, deficient, do not conform to the Contract Documents, or do not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents.

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

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

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

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

“ENGINEER” Wherever the words "ENGINEER" or "ENGINEERS" appear in the CONTRACT Documents, it shall mean GPA's engineer duly appointed as "ENGINEER". GPA shall assign several ENGINEERS as required to cover specialized areas of expertise.

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

“Equivalent Availability” shall be as defined in the NERC standards.

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

"Forced Outage" shall be as defined in the NERC standards.

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

"Fuel" means the Bunker -C fuel or Distillate Fuel delivered by GPA that shall have the fuel specifications described in Schedule C of the IFB.

"Fuel Specifications" means the specifications as to the quality and method of storage, supply and delivery of the fuel for Cabras 1&2 as described in Schedule C of the IFB.

"Fuel Supply Procedures" means the procedures and parameters for the supply and delivery of fuel by GPA described in Schedule C of the IFB.

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

"Goods" All property required to be furnished by Contractor under the procurement documents.

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

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

"Insurance" shall have that meaning specified in SECTION 16 - INSURANCE of this Contract.

"Modification" A written amendment of the Contract signed by both parties, or Change Order, or ENGINEER's Instructions.

"Month" means the period beginning the first day of the calendar month.

"O&M Spending" means spending for certain categories of operations and maintenance expenditures for the Cabras Units 1 & 2 directly impacting GPA's total O&M costs. Such expenditures

need to the optimally controlled by the contractor in order to maximize the total benefit to GPA and its customers.

“Operation & Maintenance Contract” means this Contract for the management, operation, and maintenance of the Cabras 1&2 Steam Power Plant.

“OWNER” The Guam Power Authority, a Public Corporation.

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

“Planned Outage” shall mean an outage scheduled by CONTRACTOR and GPA as defined in the NERC standards.

“Point of Delivery” The place at which property in the goods shall pass to GPA shall be CIF landed at job-site, Guam, unloaded.

“Power Stations” means the Cabras Power Plant Units 1&2 Steam Power Plant.

“Procurement Officer ” The General Manager of the Guam Power Authority or the General Manager’s designee.

“Project” The plant, facilities, or works the Goods and Services are to be used for or incorporated into.

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

“PURCHASER” The Guam Power Authority with whom Contractor has entered into the Contract Agreement.

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

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

“Seller” The Contractor.

“SITE or Site” The SITE is the area where the Project is to be executed. In this case, the SITE is the Cabras 1&2 Steam Power Plant.

“Special Services” Services to be furnished by Contractor at the Cabras Unit 1&2 Steam Power Plant as required by the Contract Agreement.

“Termination Date” shall have the meaning given in the Contract.

“Territory” The Territory of Guam.

SECTION 2 – PURPOSE AND SCOPE OF SERVICES

2.1 Purpose. GPA hereby retains TEMES to manage, operate and maintain the Cabras Units 1&2 Power Plant. By awarding the contract, the goal of GPA is to improve the efficiency, reliability, operations, maintenance the Cabras Units 1&2 Steam Power Plant.

2.2 The Scope of Services to be rendered. CONTRACTOR shall be responsible for the following:

- 1) Management, Operation, and Maintenance of the Cabras #1 and #2 Steam Power Plant;

- 2) Accomplishment of the critical repairs and major maintenance projects as well as projects ensuring the units meet or maintain availability, reliability and efficiency standards;
- 3) Supervision of Plant Staff;
- 4) Meeting Specified Performance Standards Objectives including but not limited to Unit Availability and Heat Rate;
- 5) Meeting all Environmental Compliance Rules and Regulations;
- 6) Procurement, Inventory control and management;
- 7) Plant De-activation, Decommissioning and Clean-up; and
- 8) Other Responsibilities and Duties as cited in the Invitation for Bid Documents.

TEMES shall provide those services and deliverables as set forth in the IFB.

2.3 Key Performance Indicators. TEMES shall utilize best operation and maintenance practices, training and management techniques to accomplish key performance indicators for the Cabras #1 and #2 Steam Power Plants including:

- 1) Equivalent Availability
- 2) Relative Heat Rate
- 3) Emission Guarantees
- 4) Other Performance Indicators as may be requested by GPA

SECTION 3 – CONDITIONS PRECEDENT

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

- 1) copies of resolutions adopted by TEMES's Board of Directors authorizing the execution, delivery and performance by TEMES of this Agreement certified by the company secretary of TEMES in a manner satisfactory to GPA;

- 2) a performance bond as specified in SECTION 26 – PERFORMANCE BOND of the Contract.
- 3) a copy of the Articles of the Incorporation of TEMES, certified by the company secretary in a manner satisfactory to GPA;
- 4) a copy of TEMES's license to do business in Guam.
- 5) a legal opinion of TEMES's legal counsel in form and substance the equivalent of GPA's general counsel opinion in Article 3.02(ii).

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

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

3.3 Insurance. TEMES shall obtain all insurance specified in SECTION 16 - INSURANCE of this Agreement.

SECTION 4 – CONTRACT DOCUMENTS

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

- 1) GPA-035-20

- 2) Amendments I, II, III & IV to GPA-035-20
- 3) This Operation & Maintenance Contract
- 4) The Performance Bond
- 5) Affidavit of Disclosure of Major Shareholders
- 6) Audited financial information of TEMES's firm and all subcontractors that will be used in the Performance Management of the Cabras #1 and #2 Steam Power Plant.
- 7) Certificate of Good Standing to conduct business in jurisdiction of residence
- 8) Non-collusion Affidavit
- 9) Ethical Standards Affidavit
- 10) No Gratuities or Kickbacks Affidavit
- 11) Declaration Re Compliance with US DOL Wage Determination
- 12) Restriction Against Sex Offenders Employed By Service Providers to Government of Guam From Working on Government of Guam Property

4.2 Discrepancies. In the case of discrepancies or conflicts between the above-referenced contract documents, this CONTRACT shall take precedence over GPA-035-20, and TEMES's proposal submitted in response to the IFB. In case of discrepancies or conflicts between the Amendments to GPA-035-20, the Amendments shall take precedent. Should TEMES believe that there is any discrepancy or inconsistency between this Contract and the other contract documents, TEMES shall bring such discrepancy to the attention of the General Manager before proceeding with the work affected thereby.

4.3 Presumption of Familiarity. It will be conclusively presumed that TEMES has read, examined, and agreed to each and every term, condition, provision, covenant or agreement contained within each and every Contract Document. TEMES 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 TEMES will not relieve TEMES from responsibility.

SECTION 5 – CONTRACT TERM

5.1 Term. The term of this Operation & Maintenance Contract shall be for a three-year period commencing on or about October 1, 2020 and terminating on September 30, 2023. The contractual obligation of GPA and TEMES is subject to the availability of funds.

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

5.3 Notice of Extension. GPA shall notify TEMES in writing its intent to extend the contract no later than six months before the current expiration 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 five years.

GPA and the CONTRACTOR shall negotiate the contract extension terms based on the optimum requirements for the plant. 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 less than 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 poor CONTRACTOR performance during this period.

SECTION 6 – OPERATION OF THE POWER PLANT

6.1 Full Responsibility for Management, Operations and Maintenance. During the term of this contract and any extension thereof, TEMES shall be responsible for the management, operation,

maintenance and repair of the Cabras #1 and #2 Steam Power Plant, including all regularly schedule preventative or remedial maintenance and any maintenance required due to plant forced outage. TEMES shall perform its duties, to the extent permitted by Guam law, to keep the plant in good working order.

6.2 Procure OEM and Non-OEM Support as Required. TEMES shall be responsible for procuring all OEM and Non-OEM assistance required to support the daily operation and maintenance of the plant.

6.3 Management of the O&M Budget. GPA shall approve the operations and maintenance budget for the Cabras Units 1&2 Steam Power Plant as proposed by TEMES. Said budget shall be finalized in writing and approved with execution of this Contract. TEMES shall furnish all agreed upon and required equipment, materials and supplies, and services, keeping within this budget. GPA shall reimburse TEMES for such expenditures as GPA has given prior written approval. In addition, GPA reserves the right to audit TEMES, using its own staff or outside resources, to ensure that TEMES has implemented adequate cost controls.

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

The budgets allocated by GPA to this contract are \$1,350,000 annually not included budget for Inventory Management, Critical Repairs, and Decommissioning/De-activation.

Administrative fee up to 5% for work not included in the routine O&M Budget shall be payable by GPA to TEMES subject to approval by GPA Management, CCU and the PUC, when applicable. (refer to Amendment III Q&A 9)

6.4 Management Responsibility for Cabras 1&2 Power Plant Personnel. TEMES shall provide, to the extent permitted by Guam Law, management and supervision of the staff at Cabras in the day-to-day

performance of its duties in accordance with Contract requirements. The CONTRACTOR shall comply with all responsibilities for the management of personnel as required in IFB GPA-035-20.

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

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

- a) Plant General Manager;
- b) O&M Manager;
- c) Outage Planner/Materials Manager;
- d) Administrative Procurement and Supply Assistant;
- e) Performance Engineer; and
- f) Operations and Maintenance Plant Engineer.

6.7 Hiring of Personnel Contractors and Subcontractors. CONTRACTOR may provide, upon prior written consent of GPA, experienced personnel, contractors, and subcontractors, if required during the performance of the Services hereunder. Said personnel, contractors or subcontractors shall be under CONTRACTOR's sole and exclusive direction and control, CONTRACTOR shall remain, at all times, an independent contractor and shall be responsible for and shall promptly pay all federal, state and municipal

taxes chargeable or assessed with respect to CONTRACTOR's personnel, contractors or subcontractors, including but not by any limitation, social security, unemployment, federal and state withholding, and other taxes. CONTRACTOR shall also be responsible for and pay all compensation and/or any reimbursements due to personnel, contractors, subcontractors, and no additional amounts shall be due from the Authority. The CONTRACTOR may, at any time, in consultation with GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at the Cabras plant as CONTRACTOR determines in accordance with the scope of this contract. Reimbursement for salaries and benefits shall be based on rates approved by GPA. Reimbursement shall only be for the period the CONTRACTOR hired Employees / Consultants are employed and performing work up to the termination date of their employment / contract with CONTRACTOR.

The listings of any TEMES/CONTRACTOR personnel, contractors or subcontractors shall be subject to the approval of GPA, commencing at the start of this contract. TEMES shall provide a list of personnel, contractors, and subcontractors assigned to perform work under this contract for GPA's review and approval.

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

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

All training required to be able to safely operate and maintain the plant shall be included in PMC's O&M budget unless already budgeted by other GPA divisions such as Safety Division or Planning and Regulatory Division. (refer to Amendment III Q&A 7)

6.10 Operations. CONTRACTOR shall perform and manage all operational responsibilities and activities pertaining to the Operation of the Cabras Units 1&2 Steam Power Plant, including all obligations specified under IFB GPA-035-20.

6.11 Environmental Compliance. The Contractor shall operate the power plant in compliance with all environmental and other federal local laws and regulations of this agreement, requirements (US Environmental Protection Agency and Guam Environmental Protection Agency) and shall comply with any changes in such laws, regulations and permits and with any new laws and regulations. However, TEMES shall not be responsible for any penalty or fine arising from a contravention or non-compliance with environmental laws and regulations which is solely attributable or related to machinery or equipment malfunction or failure, provided that such machinery or equipment was in operation at Cabras unit 1&2 prior to the Commencement Date; and further provided that such penalty or fine is in no manner or respect the result of any act, omission, or failure by TEMES to properly maintain such machinery or equipment or to exercise due diligence in performing services under this Agreement. TEMES will assist GPA by providing environmental compliance data to ensure due compliance by GPA. Responsibility for any cost due to new compliance issues arising after the execution of the Contract shall be borne solely by GPA. (refer to Amendment III Q&A 1, CT PMC contract)

6.12 Maintenance. CONTRACTOR shall perform and manage all responsibilities and activities pertaining to the Maintenance of the Cabras Units 1&2 Steam Power Plant, including all obligations specified under IFB GPA-035-20.

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

- 1) Utilize the GPA Computerized Maintenance and Management System (CMMS) to

track repairs, preventive maintenance history, materials and labor costs, etc.

- 2) Ensure that all major outages are planned well in advance and are executed to meet projected budgets, time lines, and all technical specifications of the work.
- 3) Provide effective methods to help manage all major overhauls in specific target areas.
- 4) Provide engineering expertise to evaluate cost effective alternative solutions whenever generation components show greater wear and tear than expected during the outage planning study.
- 5) Assist in developing detailed condition assessment inspections to provide valuable data in planning a major outage for a specific targeted power plant.
- 6) The Contractor shall evaluate, monitor and provide recommendations on plant operating procedures, employee skill gaps and any other resources (such as reference technical drawings, service manuals, or other tools) that are usually helpful in the efficient operation of a particular power plant.

6.14 Plant Engineering and Technical Services. CONTRACTOR shall provide plant engineering and technical services for:

- a) Critical Repairs;
- b) Major Maintenance Projects; and
- c) Tasks related to compliance with the Guam State Implementation Plan and Consent Decrees;
- d) Other repairs, projects activities or technical tasks necessary to maintain reliability, availability, efficiency; comply with regulatory requirements; align with resource implementation planning efforts; and to support GPA in other initiatives or projects.

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

supplies and services; agreed by GPA, in maintaining and repairing the plant, TEMES shall have the authority to:

- 1) enter into contracts for the supply of materials and services, including, contracts with GPA;
- 2) appoint and remove consultants and professional advisers;
- 3) purchase replacement parts and equipment;
- 4) perform other obligations as specified in GPA-035-20 regarding Procurement and Outsourcing.

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

- 1) Maintain required spare parts inventory
- 2) Recommend tasks for inventory optimization
- 3) Account for specialized tools and assets
- 4) inventory management reporting
- 5) perform other obligations as specified in GPA-035-20.

6.17 Regulatory Reporting. TEMES shall undertake those communications and reporting requirements.

6.18 Designated Representative. Contractor has designated the PMC General Plant Manager as its primary contact for GPA with regard to the services provided hereunder. Contractor shall ensure that said person is reasonably available to GPA management in person during working hours for the term of this contract.

6.19 Compliance with Law. Contractor shall comply, and secure compliance by its subcontractors, with all applicable laws or regulations in connection with the Goods and services furnished

hereunder. This includes the securing of any business or other licensing, certifications, or permits required. If Contractor discovers any variance between the provisions of applicable laws and regulations and the drawings, Specifications, and other technical data furnished by the GPA, Contractor shall promptly notify GPA in writing thereof and obtain approval of necessary changes from GPA before proceeding with the work affected thereby.

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

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

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

6.23 Performance. GPA's review, approval, acceptance of and payment of fees for services required under this contract shall not be construed to operate as a waiver of any rights under this contract or of any cause of action arising out of Contractor's failure to perform in accordance with this contract.

SECTION 7 – PERSONNEL MANAGEMENT – UTILIZATION OF GPA EMPLOYEES

7.1 GPA Assignment of Existing Employees. GPA shall, unless otherwise provided for in this Section, on the Commencement Date, assign to the Cabras Units 1&2 Steam Power Plant and shall keep assigned to the Cabras Units 1&2 Steam Power Plant all Qualified GPA Employees assigned to and actually working at the power plants as of the date first written above. GPA shall make the assignments in such a manner and at such a time so as to ensure that the GPA employees so assigned are present for duty at the Cabras Units 1&2 Steam Power Plant on the Commencement Date at the times at which they are normally present.

7.2 CONTRACTOR Utilization of Existing GPA Employees. CONTRACTOR shall, unless otherwise provided for in this Section, beginning on the Commencement Date and continuing through the Termination Date, utilize all GPA employees assigned to Cabras Units 1&2 Steam Power Plant.

7.3 General Assignment. All GPA employees assigned by GPA to the Cabras Units 1&2 Steam Power Plant, at any time under any provision of this Contract shall be, at the time of their assignment, and shall, at all times during their assignment, continue to be Qualified GPA Employees and shall be assigned to Cabras Units 1&2 Steam Power Plant. Before assigning an employee Cabras Units 1&2 Steam Power Plant, GPA shall establish that the employee is a Qualified GPA Employee.

7.4 Personnel Administration. GPA shall, subject to Sections 7.5 through 7.10, perform all personnel administration functions for GPA employees assigned to the Cabras Units 1&2 Steam Power Plant. GPA shall have access to its employees assigned to the Cabras Units 1&2 Steam Power for the purpose of performing its administrative functions. Personnel administration functions shall include, but not be limited to:

- 1) Computation and payment of compensation; GPA shall retain its standard responsibilities for all GPA employee payroll expenses and disbursements;
- 2) Administration of sick leave, maternity leave, paternity leave, annual leave, military leaves of absence and such other programs providing GPA employees authorized absences;
- 3) Recruitment, examination and appointment of new hires;
- 4) Administration of employee benefit plans, health insurance, retirement plans, worker compensation plans, and such other programs for the welfare of GPA employees;
- 5) In-service training programs and such other training programs for which GPA employees are eligible; and,

- 6) Such other personnel matters not related to the maintenance, operation, and repair of the Cabras Units 1&2.

7.5 GPA Policies and Procedures. GPA shall take such actions and shall establish, to the extent not already in existence, and implement Departmental policies, procedures, or rules pursuant to appropriate authority, applicable to CONTRACTOR and to GPA employees assigned to the Cabras Unit 1&2 that facilitate and enhance CONTRACTOR's ability to efficiently and effectively repair, operate, and maintain the Cabras Units 1&2 Steam Power Plant and which, at a minimum, provide for:

- 1) In the event that GPA disciplines any GPA employee assigned to the Cabras Units 1&2 Steam Power Plant and imposes the adverse action of suspension ("Disciplined Employee"), GPA shall provide a substitute employee who shall be a Qualified GPA Employee ("Substitute Employee") for the position then occupied by the Disciplined Employee. The Substitute Employee shall work at the Cabras Units 1&2 Steam Power Plant for the period beginning on the day before the suspension of the Disciplined Employee and continuing through the day after the suspension ends. This requirement for GPA to provide a Substitute Employee also applies to a suspension of an employee during the notice period of the disciplinary procedures and when an employee is placed on administrative leave pending adverse action.
- 2) CONTRACTOR authority and discretion to counsel or issue written warnings to individual employees for unsatisfactory work performance and violations of work rules, conduct rules, safety procedures, or other conduct CONTRACTOR determines to be detrimental to the safe and efficient repair, operation, and maintenance of the Cabras Units 1&2 Steam Power Plant. In its sole discretion, GPA may take disciplinary action, as it deems appropriate. CONTRACTOR shall

cooperate and assist GPA by providing such witnesses and evidence as GPA may reasonably request to support any disciplinary action. CONTRACTOR may request disciplinary action but shall not have authority to initiate or direct disciplinary action against any individual GPA employee; provided, however, that GPA shall use its best efforts to proceed promptly, diligently, and thoroughly to process all requests and take such disciplinary action as requested by CONTRACTOR if reasonable under the circumstances, including, but not limited to the immediate suspension of GPA employees during the notice period of GPA's disciplinary procedures, or placing employee on administrative leave pending adverse action, if their continued presence would interfere with the safe and efficient operation of the Cabras Units 1&2 Steam Power Plant or the safety and health of persons or if the suspension was necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents;

- 3) GPA and CONTRACTOR, upon request, must provide all information relating to employee activities necessary to the management and GPA employees assigned to Cabras Units 1&2 Steam Power Plant.
- 4) Appropriate implementation of Section 6.2 through 6.12.

7.6 CONTRACTOR Plant Management. CONTRACTOR shall coordinate with the Generation Manager and Assistant Plant Superintendent to establish work rules, assign and direct the work of the GPA work force, make work schedules, establish safety procedures, prescribe training and approve attendance at training, and any other necessary management actions in performing the requirements of this Contract. CONTRACTOR shall have the sole discretion in selecting methods and means to accomplish the refurbishing, operation, and maintenance of the Cabras Units 1&2 Steam Power Plant.

7.7 Assignment to Position. The assignment of GPA employees to the Cabras Units 1&2 Steam Power Plant shall be to a specific position within the Cabras Units 1&2 Steam Power Plant.

7.8 CONTRACTOR may, at any time, with prior written approval from GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at the Cabras Units 1&2 Steam Power Plant as CONTRACTOR determines in accordance with the scope of the CONTRACTOR.

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

7.10 CONTRACTOR Vacancies – Consideration of GPA Employees. When CONTRACTOR hires to fill positions at the Cabras Units 1&2 Steam Power Plant, CONTRACTOR shall give due consideration, to all Qualified GPA Employees or retirees, who at the time of their retirement were Qualified GPA Employees who apply. CONTRACTOR and GPA may meet and confer to discuss the development of plans whereby CONTRACTOR could hire retirees of GPA.

SECTION 8 – SUPPLY OF FUEL

8.1 During the term of this agreement, GPA shall at all times supply all fuel necessary for Cabras Units 1&2 Steam Power Plant to generate the electricity for dispatch by GPA.

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

8.3 All fuel to be supplied by GPA shall be of the quality and supplied and delivered in the manner described in the IFB.

8.4 All fuel shall be tested as provided in the IFB.

8.5 GPA shall ensure that at all times the necessary stocks of fuel are available for storage at the fuel storage tanks of Cabras Units 1&2 Steam Power Plant.

8.6 The Contractor shall prepare weekly fuel schedules showing anticipated times and Quantities of fuel to be utilized by Cabras Units 1&2 Steam Power Plant and GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefore and for all arrangements with the suppliers.

SECTION 9 – DUTIES AND RESPONSIBILITIES OF GPA

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

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

9.3 Responsibility for Transmission Lines. GPA, at its own cost, will be responsible for the maintenance and repair of all the transmission lines and switchgear within the switchyard and on the GPA grid to ensure that at all times they are capable of accepting the energy and capacity provided by Cabras Units 1&2 Steam Power Plant.

9.4 GPA/Contractor Steering Committee. GPA and the Contractor shall organize a Steering Committee, which shall, from time to time, meet and discuss and agree on safety and technical guidelines for the operation of Cabras Units 1&2 Steam Power Plant and for the maintenance, repair and safety/security of the Unit. The Contractor shall operate Cabras Units 1&2 Steam Power Plant within such guidelines.

SECTION 10 – COMPENSATION FOR SERVICES

10.1 Payment. GPA shall pay Contractor for costs and services rendered hereunder in accordance with this Agreement. Said payment shall be made within 30 days of being invoiced. Should part of the invoice be challenged, GPA will at a minimum pay the unchallenged portions of the invoice under the same terms as above. Should GPA fail to make any payment due to TEMES under this Agreement,

GPA shall pay interest to TEMES in accordance with the provisions of the Prompt Payment Act, 5 GCA Sections 22502-22507.

10.2 Contract Price. The Contract Price constitutes the total consideration to be paid by GPA to Contractor for the complete delivery of the Goods, Special Services, and for performing other services in connection therewith in accordance with the Contract Documents as amended by the parties pursuant to the Agreement. Unless expressly provided otherwise in the Contract Documents, the Contract Price is not subject to escalation in respect of materials and/or labor cost or any other factor or variation in rates of exchange, and all duties, responsibilities, and obligations assigned to or undertaken by Contractor shall be at its expense without change in the Contract Price. Charges, fees, Contractor's profit, and all other expense shall be deemed to be included in the Contract Price. Furthermore, the Contract Price includes management fees and incentive/penalty payments. Therefore, the Contract Price is dynamic but bounded.

Only a formal Change Order request, accepted by GPA, may change the Contract Price. Contractor shall make any claim for an increase in the Contract Price in advance of performance of any such changes. However, GPA reserves the right to challenge or refute such claims.

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

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

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

- 1) Annual Management Fees;
- 2) Reimbursement Payments for Operations and Maintenance related expenditures as agreed to and scheduled between GPA and the Contractor, not to exceed O&M budget approved and allocated by GPA;
- 3) Reimbursement Payments for Critical Repair and/or Major Maintenance projects and related expenditures not included in the O&M budget as agreed to and scheduled between GPA and TEMES; (refer to GPA-35-20 of Page 71)
- 4) Reimbursement of Inventory purchases. (refer to GPA-35-20 of Page 71)
- 5) Incentive Compensation Payment due to TEMES's performance above the minimum performance guarantees, or as specified and agreed upon in APPENDIX C: GUARANTEES and APPENDIX D: INCENTIVES AND PENALTIES of this Contract and in Amendment III to MSB GPA-035-20.
- 6) Penalty Compensation Payments due to GPA from the TEMES based on Contractor's failure to meet its minimum performance guarantees, or as specified and agreed upon in APPENDIX C: GUARANTEES and APPENDIX D: INCENTIVES AND PENALTIES of this Contract and in Amendment III to MSB GPA-035-20.
- 7) In addition to the expenditure authorization for the routine O&M Spending, costs of TEMES directly associated with sudden unexpected failure of major equipment shall be reimbursed by GPA when TEMES demonstrates which failure:
 - substantially reduces or eliminates the capability of the power stations to produce power, or
 - is beyond the reasonable control of TEMES and could not have been prevented by the exercise of due diligence by TEMES.

(refer to CT PMC contract)

10.4 The cost of management fees under this Agreement shall remain fixed during the term of this Agreement and shall be paid in twelve equal monthly installments. As stated, the total amount of fees includes all travel costs, living allowances, expenses, and all other matters related to the price of this contract. The total contract price is intended to be all inclusive of costs and expenses related to performance hereunder. The Annual Management Fees are as follows:

Contract Year	Annual Management Fee
1	\$ 1,915,037.00
2	\$ 1,972,488.00
3	\$ 2,031,663.00
TOTAL	\$ 5,919,188.00

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

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

10.7 Final payment shall be made upon delivery and acceptance of all Services as herein specified and performed under this Agreement. Prior to final payment, and as a condition precedent thereto, Contractor shall execute and deliver to 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.

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

payment of any applicable taxes.

SECTION 11 - TERMINATION

11.1 Order to Stop Work. The Procurement Officer may, by written order to the Contractor, at any time, and without notice to any surety, require the Contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety-days (90-days) after the order is delivered to the Contractor, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, the Procurement Officer shall either:

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

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

- 1) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- 2) The Contractor asserts a claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Procurement Officer decides that the facts justify such action, any such claim asserted may be received

and acted upon at any time prior to final payment under this contract.

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

11.4 Termination. The Procurement Officer may, when the interest of GPA so requires, terminate this contract in whole or in part, for the convenience of GPA. The Procurement Officer shall give written notice of the termination to Contractor specifying the part of the contract terminated and when termination becomes effective. Any such termination shall be effected by delivery to the TEMES of a written Notice of Termination specifying the extent to which the Performance Management Contract for GPA's Cabras Units 1 & 2 Steam Power Plant is terminated and the Contract shall be terminated effective Ninety (90) days after receipt of notice by TEMES. In the case of termination of this Contract, GPA shall reimburse TEMES of all the expenses related to the period of the Performance Bond that were not used.

11.5 Contractor's Obligations. The Contractor shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination the Contractor will stop work to the extent specified. The Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. The Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Procurement Officer may direct the Contractor to assign the Contractor's right, title, and interest under terminated orders or subcontracts to the GPA. The Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

11.6 Rights to Supplies. The Procurement Officer may require the Contractor to transfer title and deliver to GPA in the manner and to the extend directed by the Procurement Officer:

- 1) Training material;
- 2) Any completed supplies; and,
- 3) Such partially completed supplies and materials, parts, tools, dies, jigs, fixtures,

plans, drawings, information and contract rights (hereinafter called "manufacturing material") as the Contractor has specifically produced or specially acquired for the performance of the terminated part of this contract. The Contractor shall, upon direction of the Procurement Officer, protect and preserve property in the possession of the Contractor in which GPA has an interest. If the Procurement Officer does not exercise this right, the Contractor shall use best efforts to sell such supplies and manufacturing materials in accordance with the standards of **Uniform Commercial Code of Guam (UCCG), Section 2706**. Utilization of this Section in no way implies that GPA has breached the contract by exercise of the Termination for Convenience Clause.

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

- 1) The Contractor shall submit a termination claim specifying the amounts due because of the termination for Convenience together with cost or pricing data to the extent required by **Section 3403 (Cost or Pricing Data) of the Guam Procurement Regulations** bearing on such claim. If the Contractor fails to file a termination claim within one year from the effective date of termination, the Procurement Officer may pay the Contractor, if at all, an amount set in accordance with subparagraph (3) of this Paragraph.
- 2) The Procurement Officer 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 3403 (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, and the contract

price of the work not terminated.

3) Absent complete agreement under Subparagraph (b) of this Paragraph, the Procurement Officer shall pay the Contractor the following amounts, provided payments agreed to under Subparagraph (b) shall not duplicate payments under this subparagraph:

- a. Contract prices for supplies or services accepted under the contract;
- b. Costs incurred in preparing to perform and performing the terminated portion of the work plus a fair and reasonable profit on such portion of the work (such profit shall not include anticipatory profit or consequential damages) less amounts paid or to be paid for accepted supplies or services; provided, however, that if it appears that the Contractor would have sustained a loss if the entire contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
- c. Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to **Paragraph 11.7** of this clause. These costs must not include costs paid in accordance with other subparagraphs of this Paragraph;
- d. The reasonable settlement costs of the Contractor including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract for the termination and settlement of subcontracts there under, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this contract. The total sum to be paid the Contractor

under this Subparagraph shall not exceed the total contract price plus the reasonable settlement costs of the Contractor reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this Paragraph, and the contract price of work not terminated. Termination Payment shall be made by GPA to TEMES within One-Hundred and Eighty (180) days from receipt of termination claim.

- e. Cost claimed, agreed to, or established under subparagraph (b) and (c) of this Paragraph shall be in accordance with **Chapter 7 (Cost Principles) of the Guam Procurement Regulations, 13 GCA 2706. All references in said regulations to “seller” shall be deemed to refer to “contractor” herein.**

11.8 Termination for Default. If the Contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Procurement Officer may notify the Contractor in writing of the delay or non-performance and if not corrected in ten days or any longer time specified in writing by the Procurement Officer, such officer may terminate the Contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Procurement Officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the Procurement Officer. The Contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess cost incurred on procuring similar goods or services.

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

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

11.11 Excuse for Non-Performance or Delayed Performance. Except with respect to defaults of subcontractors, the Contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the Contractor has notified the Procurement Officer within fifteen (15) days after the cause of the delay and the failure arises out of causes constituting a "force majeure" or "act of god" as defined in and breach of any applicable law by TEMES.

GPA shall indemnify, defend and hold TEMES harmless from all loss, damage, or expense (including reasonable attorney's fees incurred by owner) arising out of performance of the work, including injury or death to any person or persons resulting from the acts or omission of GPA or GPA's employees, servants, agents or Subcontractors and from mechanics and materialism liens and breach of any applicable law by GPA.

Accident or Injury During Travel. Neither GPA nor TEMES assumes no liability for any accident or injury that may occur to Contractor, its agents, dependents or personal property while en route to or from Guam or during any travel mandated by the terms of this Agreement.

11.12 **SECTION 18 – FORCE MAJEURE** of this agreement.

11.13 Erroneous Termination for Default. If, after notice of termination of the Contractor's right

to proceed under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph 11.11 (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for Convenience of GPA, be the same as if the notice of termination had been issued pursuant to such clause. If, in the foregoing circumstances, this contract does not contain a clause providing for termination for Convenience of GPA, the contract shall be adjusted to compensate for such termination and the contract modified accordingly subject to the Contractor's rights under Chapter 9 (Legal and Contractual Remedies) of the Guam Procurement Regulations.

11.14 Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

11.15 Termination by Contractor. If, within thirty (30) days after payment of a proper and correct invoice is due from GPA to CONTRACTOR, and upon ten (10) days written notice from CONTRACTOR to GPA, CONTRACTOR may terminate this agreement.

11.16 Work Product. Upon such termination of this Agreement, all briefs, reports, summaries, completed work, and work in progress, and such other information and materials as may have been accumulated by Contractor in performing this Agreement shall, in the manner and to the extent determined by GPA, become the property of and be delivered to GPA. Contractor may retain a copy of all work that it produces.

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

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

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term of this Agreement.

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

SECTION 12 – RELATIONSHIP OF THE PARTIES

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

12.2 Duty To Inform Employees. It is Contractor's duty and obligation to inform Employees of (1) applicable GPA rules and regulations; and (2) the proprietary nature of information and the need to guard its secrecy per Section 12 hereof.

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

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

12.5 No Employment Benefits To Contractor. There shall be no employee benefits to Contractor occurring from this Agreement such as:

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

12.6 No Withholding By GPA. There shall be no withholding of taxes by GPA.

12.7 No Employment Benefits To Contractor, Its Employees Or Personnel. No person providing services on behalf of Contractor pursuant to this Agreement shall have any claim under this Agreement or otherwise against GPA for salary, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, professional malpractice, or unemployment insurance benefits or other employee benefits of any kind. Contractor understands and agrees that (i) its employees or personnel who provide services under this Agreement will not be treated as GPA employees for tax purposes, (ii) GPA will not withhold on behalf of Contractor's employees or personnel any sums for income tax, unemployment insurance, social security, or any other withholding pursuant to any law or requirement

of any governmental body or make available any of the benefits afforded to employees of GPA, and (iii) all of such payments, withholdings, and benefits, if any, are the sole responsibility of Contractor.

12.8 Payment of Taxes. Contractor will be responsible for paying all taxes applicable to them as an independent contractor, including but not limited to, GRT, income tax, or any other tax.

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

SECTION 13 – OWNERSHIP OF INFORMATION, DATA AND DOCUMENTS

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

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

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

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

SECTION 14 – CONFIDENTIAL AND TRADE SECRET INFORMATION

14.1 Protection of Trade Secret. Contractor and its employees upon coming into contact with or receiving directly from GPA confidential and/or trade secret information, will be bound by any protective order relating to this information. Contractor and employees will treat all information received by it during

the term of this Agreement as strictly confidential and will not disclose such information in any form, to third parties or internally within Contractor's firm to employees without a need to know such information, without the express written permission of GPA. Confidential information, whether magnetically stored or not must be secured. Contractor will control access to such material and ensure that no breach of confidentiality occurs. Contractor, on receiving requests or orders for information in the form of questions, interrogatories, etc. from non GPA sources, will advise GPA immediately by telephone and follow-up by providing copies of such requests.

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

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

SECTION 15 –ACCESS TO RECORDS AND OTHER REVIEW

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

SECTION 16 - INSURANCE

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

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

A. General Liability Insurance including products, completed operations and contractual liability coverage in the amount of \$2,000,000 per occurrence and \$2,000,000 aggregate.

- i. Policy must be primary and non-contributory with endorsements attached.
- ii. GPA shall be named as an Additional Insured.
- iii. Waiver of subrogation shall be in favor of GPA
- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.

1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

B. Commercial Auto Liability insurance covering third party bodily injury and property damage in the amount of \$1,000,000 combined single limit per occurrence.

- i. Policy must be primary and non-contributory with endorsements attached. GPA shall be named as an Additional Insured.
- ii. Waiver of subrogation shall be in favor of GPA
- iii. MCS 90 Endorsement

- iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
 - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- C. Excess Liability insurance over the General Liability and the Commercial Auto Liability with limits of \$10,000,000 or higher per occurrence/ \$10,000,000 aggregate.
 - i. Policy must be primary and non-contributory with endorsements attached.
 - ii. GPA shall be named as an Additional Insured.
 - iii. Waiver of subrogation shall be in favor of GPA
 - iv. MCS 90 Endorsement
 - v. Cancellation clause of minimum 90 days' prior written notice to GPA.
 - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- D. Worker's Compensation and Employer's Liability Insurance – Statutory Limits.
 - i. Policy must be primary and non-contributory with endorsements attached.
 - ii. GPA shall be named as an Additional Insured.
 - iii. Waiver of subrogation shall be in favor of GPA
 - iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
 - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.
- E. Professional Liability Insurance including in the amount of \$1,000,000 each claim.
 - i. Policy must be primary and non-contributory with endorsements attached.
 - ii. GPA shall be named as a NAMED INSURED
 - iii. GPA shall be named as Loss Payee
 - iv. Cancellation clause of minimum 90 days' prior written notice to GPA.
 - 1. GPA must be given minimum 90 days' prior written notice for any material

changes in the policy or cancellation of the policy.

If applicable, construction project:

F. Contractors All Risk or Builders Risk Insurance

- i. Minimum Limits, deductibles, sub-limits, coverage, and property descriptions per contract or project description.
- ii. Policy must be primary and non-contributory with endorsements attached.
- iii. GPA shall be named as a NAMED INSURED
- iv. GPA shall be named as a Loss Payee
- v. Waiver of subrogation shall be in favor of GPA
- vi. Cancellation clause of minimum 90 days' prior written notice to GPA.
 - 1. GPA must be given minimum 90 days' prior written notice for any material changes in the policy or cancellation of the policy.

If applicable, fuel /hazardous materials transport:

- G. General Liability and the Commercial Auto Liability with limits of \$5,000,000 or higher per occurrence.
- i. Policy must be primary with primary wording endorsement attached.
 - ii. GPA shall be named an additional insured
 - iii. Waiver of subrogation shall be in favor of GPA
 - iv. Cancellation clause of minimum 60 days' prior written notice to GPA
 - v. Policy must have MCS 90 Endorsement

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

- H. Cancellation Clause of minimum 90 days' prior written notice to GPA.

GPA must be given minimum 90 days' prior written notice before any material changes in the policy or cancellation of the policy can take effect.

Written notice must be addressed to:

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

Certificate of insurance must contain this wording to be acceptable.

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

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

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

or damage to the property and machinery and equipment not required to be insured hereunder, GPA shall bear the cost of the same. GPA shall be deemed to be self-insured as to the deductible or co-insurance amount applicable to such insurance coverage and shall pay any deductible or co-insurance amount applicable in the event of such loss or damage.

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

SECTION 17 - INDEMNITY

17.1 Indemnification. The Contractor shall indemnify, defend and hold harmless owner (GPA) against all loss, damage, or expense (including reasonable attorney's fees incurred by owner) arising out of the performance of the work, including injury or death to any person or persons resulting from the acts or omission of the Contractor or the Contractor's employees, servants, agents or subcontractors and from mechanics and materialism liens and breach of any applicable law by TEMES.

GPA shall indemnify, defend and hold TEMES harmless from all loss, damage, or expense (including reasonable attorney's fees incurred by owner) arising out of performance of the work, including injury or death to any person or persons resulting from the acts or omission of GPA or GPA's employees, servants, agents or Subcontractors and from mechanics and materialism liens and breach of any applicable law by GPA.

17.2 Accident or Injury During Travel. Neither GPA nor TEMES assumes no liability for any accident or injury that may occur to Contractor, its agents, dependents or personal property while en route to or from Guam or during any travel mandated by the terms of this Agreement.

SECTION 18 – FORCE MAJEURE

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

- 1) Delay caused by lack or inability to obtain raw materials, congestion at Contractor 's or its subcontractor's facilities, or elsewhere; market shortages, or similar occurrences, or
 - 2) Delay, either on the part of Contractor or its subcontractors, caused by shortages of supervisors or labor, inefficiency, or similar occurrences, or
 - 3) Sabotage, strikes, or any other concerted acts of workmen which occur only in the facilities of Contractor or its subcontractors.
- Should the circumstances of Force Majeure continue over a period of ninety (90) days, GPA has the right, if no other understanding is reached, to terminate the whole Agreement or any part thereof in accordance with Section 11, TERMINATION. Any delay or failure in performing the obligations under the Contract Documents of the parties hereto shall not constitute default under the Purchase Contract or give rise to any claim for damages or loss or anticipated profits if, and to the extent, such delay or failure is caused by Force Majeure, and if a claim is made therefore.

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

- 1) Notify the other party as soon as reasonably possible by facsimile, e-mail, telex, cable or Messenger/courier of the nature of Force Majeure, anticipated exposure time under Force Majeure, and the extent to which the Force Majeure suspends the affected party's obligations under the CONTRACT;
- 2) Consult with the other party and take all reasonable, prudent steps to minimize the losses of either party resulting from the Force Majeure;

3) Resume the performance of its obligations as soon as possible after the Force Majeure condition ceases.

18.3 Delivery Time and Force Majeure. Only a Change Order may change contractual Delivery Times. Contractor as provided in Section 22 and its sub-paragraphs shall file all claims for an extension in the Delivery Time.

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

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

SECTION 19 - WARRANTY

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

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

19.3 Contractor shall be responsible for remedying all defects, without limitation, in design, materials, workmanship, operating characteristics, or performance of the Goods within twelve (12) months from the date on which GPA has placed the Goods in continuous service, or within twenty-four (24) months from the date of final payment, whichever date shall first occur, or within such longer period of time as

may be prescribed by law or by the terms of any applicable special guarantee or by any specific provisions of the Contract Documents.

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

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

SECTION 20 – TESTS AND INSPECTIONS

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

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

20.3 Any inspection made by the inspector of GPA and/or its designee will be final. Such inspections or the witnessing of Contractor's test and inspection by GPA and/or its designee shall not

relieve Contractor of any of its responsibilities or liabilities under the Contract Documents, nor be interpreted in any way as implying acceptance of the Goods.

SECTION 21 – DEFECTS IN GOODS AND SERVICES

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

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

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

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

21.3 Cost of Remedying Defects. All direct, indirect, and other costs of correcting, removing, and replacing defective Goods or of obtaining Special Services elsewhere and of exercising GPA's rights and remedies will be charged against Contractor and, if incurred prior to final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents and a reduction in the Purchase Price, or if incurred after final payment, an appropriate amount will be paid by Contractor to GPA. Such direct, indirect, and other costs will include, in particular but without limitation, compensation

for additional professional services required and all costs of repair and replacement of Goods, or property of GPA or others destroyed or damaged by correction, removal, or replacement of defective Goods. Contractor shall not be allowed an extension of the Delivery Time because of any delay in performance attributable to the exercise by GPA of GPA's rights and remedies under this paragraph.

SECTION 22 – CHANGE ORDER

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

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

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

22.2 Time Period for Claim. Within 30 days after receipt of a written change order under SECTION 22 – 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 GPA is prejudiced by the delay in notification.

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

SECTION 23 – SUCCESSORS AND ASSIGNMENTS

This Agreement is binding upon the parties hereto and their respective heirs, successors and assigns. However, Contractor shall not assign, subcontract or otherwise transfer this Agreement, its interests herein or its responsibilities and duties hereunder without the prior written consent of GPA. For purposes of this section, any change in ownership of Contractor or its corporate entity shall be deemed an assignment or

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transfer under this section. "Change in corporation entity" includes any sale or transfer of shares, the organization of corporate structure, alteration of the current ownership and organization of Contractor.

SECTION 24 – REPRESENTATIVES OF GPA

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

SECTION 25 – PROFESSIONAL RELATIONSHIP

Contractor has undertaken a limited review of its records to determine its professional relationships with persons and entities in the utilities industry, and based upon that review, represents that it has the right to enter into this Agreement and it is not precluded from performing the Services to be provided hereunder. Contractor will notify GPA immediately if any additional relationships come to its attention. However, given Contractor's size, complexity, geographic dispersion and number of clients, it cannot assure GPA that all of such relationships have or will come to light.

SECTION 26 – PERFORMANCE BOND

Contractor shall submit to GPA a performance bond within thirty (30) days after the receipt of the Notice of Contract Award, in the amount of as specified in MSB GPA-035-20, payable to GPA in the form of a surety bond, surety company or surety bond acceptable to GPA's bankers, or a cash deposit in a local bank approved by GPA and callable upon proper demand. A performance bond is required in order to assure that Contractor will perform the terms and conditions of the Contract, and that Contractor will provide against direct or indirect damages that may be suffered during the duration of the Contract. The required performance bond shall be in such form that GPA shall approve in its absolute discretion. Failure

to furnish a performance bond at the time specified above and in the manner as provided shall be grounds for cancellation of Contract.

SECTION 27 – DISPUTE RESOLUTION

27.1 Regular Meetings. Throughout the term of this Agreement representatives of GPA and the Contractor shall meet regularly to discuss the progress of the projects in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

27.2 Informal Resolution. The parties hereto agree that in the event that there is any dispute or difference between them arising of this Contract or in the interpretation of any of the provisions hereof, they shall endeavor to meet together in an effort to resolve such dispute by discussion between them, but failing such resolution, the Chief Executives of GPA and the Contractor shall meet to resolve such dispute difference and the joint decision of such Chief Executives shall be binding upon the parties hereto and in the event that a settlement of any such dispute or difference is not reached pursuant to this sub-clause, then the provisions of Section 27.3 shall apply.

27.3 Formal Claims. Where any dispute is not resolved as provided for in the preceding Section 27.1 and 27.2 it shall be resolved pursuant to the Guam Procurement Law 5 GCA, Section 5001 et. seq. and the Government Claims Act, 5 GCA Section 2001 et. seq.

27.4 Continuing Performance. Contractor shall continue its performance under the Agreement during all claims, disputes, or disagreements with GPA. Production of Services or Goods will not be delayed or the timely delivery of Goods or furnishing of Services be prejudiced, delayed, or postponed pending resolution of any claims, disputes, or disagreements, except as Contractor and GPA may otherwise agree in writing.

SECTION 28 - MISCELLANEOUS

28.1 No Inducements. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no agreement, statement, or promise not

contained in this Agreement, shall be valid or binding.

28.2 Modifications. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

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

28.4 Compliance. Contractor shall be required to comply with all Federal and Territorial laws and ordinances applicable to the Services provided.

28.5 Notices. Any notice, demand or other document required or permitted to be delivered hereunder shall be in writing and may be delivered personally or shall be deemed to be delivered seven (7) days after deposit in the United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the parties at their respective address indicated below, or at such other address as may be theretofore been specified by written notice delivered in accordance herewith:

TO CONTRACTOR:

8th Floor, 119, Baozhong Rd.,
Xindian Dist., New Taipei City 23144
Taiwan R.O.C.

TO GPA:

Guam Power Authority
Attention: General Manager
Post Office Box 2977
Hagatna, Guam 96932
Telephone No.: (671) 648-3225 /3180
Facsimile No.: (671) 648-3290

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Notice may be given by facsimile transmission to the facsimile numbers indicated above, and shall be deemed to be delivered upon actual receipt by the party.

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

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

28.7 Governing Law. This Agreement has been entered into Guam and shall be governed by and construed in accordance with the laws of Guam and all applicable federal laws.

28.8 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term hereof, such provision shall be fully severable and this Agreement shall, to the extent possible and without destroying the intent of this

Agreement, be construed and enforced as if such illegal, invalid, or unenforceable provision had never comprised a part hereof; and the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom.

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

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

28.11 Language and Trade Terms. All communications, documents, and execution of services hereunder, unless otherwise designated, shall be in the English language. INCOTERMS (International Rules for the Interpretation of Trade Terms) published by the International Chamber of Commerce in 1980 and any subsequent revisions thereto shall govern interpretation of trade terms in the Contract Documents.

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

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

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

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

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

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

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

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

CONTRACTOR

Hung. Chung-Hsiung
Contractor's Duly Authorized Representative

08/31/2020
Date

GUAM POWER AUTHORITY

John M. Benavente
John M. Benavente, P.E.
General Manager

9/01/2020
Date

CERTIFIED AS TO FUNDS AVAILABLE

[Signature]
GPA Certifying Officer

9/18/2020
Date

APPROVED AS TO FORM

[Signature]
D. Graham Botha, Esq.
Legal Counsel, GPA

Date



財團
法人

台灣機電工程服務社

TAIWAN ELECTRICAL AND MECHANICAL ENGINEERING SERVICES, INC.

POWER OF ATTORNEY

To Whom It May Concern:

August 17, 2020

WE, TAIWAN ELECTRICAL AND MECHANICAL ENGINEERING SERVICES, INC. (TEMES, INC.) hereby appoint and authorize:

Mr. CHUNG-HSIUNG HUNG: Branch Manager of TEMES, INC.

as our true and lawful attorney in fact, for us and in our name, place and stead, and do the acts of signing the contract for "IFB No. GPA-035-20 Performance Management Contract (PMC) for the Cabras Units #1 & #2 Steam Power Plant" invited by GUAM POWER AUTHORITY".

This Power of Attorney shall remain in full force and valid until another notice issued.

TAIWAN ELECTRICAL AND MECHANICAL
ENGINEERING SERVICES, INC. (TEMES, INC.)

Bin-Li chung.

BIN-LI CHUNG

Chairman, Board of Directors

109年度

北院民福金字: 01377	日期: AUG 19 2020
Case No.: 01377 Date: AUG 19 2020	
本文件之簽名或蓋章，在臺灣臺北地方法院所屬民間公證人林金鳳事務所辦理。公證人：林金鳳	
Attested at the Lin, Chin-Feng Notary Public Office of Taiwan Taipei District Court, R.O.C., that the signature(s)/seal(s) in this document is/are authentic.	
Notary Public	
No. 1-1 Lin, Chin-Feng	
Add: Room. B, 5F, Nanjing W. Rd., Taipei, Taiwan, R.O.C.	

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APPENDICES

Appendix A – Technical and Functional Requirements

Appendix B – Annual Management Fees and O&M Budget

Appendix C – Guarantees

Appendix D – Incentives and Penalties

Appendix E – Fuel Specifications and Arrangements

APPENDIX A: TECHNICAL AND FUNCTIONAL REQUIREMENTS

This section describes the technical and functional requirements of the Performance Management Contract. It establishes the responsibilities of the Guam Power Authority (GPA) and the Performance Management Contractor (CONTRACTOR).

The CONTRACT between the CONTRACTOR and GPA shall be constructed as a Fixed Annual Management Fee Contract, whereby the parties establish the mutually agreed contract deliverables and guarantees. In addition, the CONTRACT shall include provisions for operations and maintenance supplies and services and the inventory management and control of Cabras Units 1 and 2 Steam Power Plant.

The CONTRACT scope includes functional requirements that cover several key areas related to the operations and maintenance of the Cabras Steam Power Plant:

- Operation & Maintenance of Cabras 1&2 Steam Power Plant;
- Staff Management & Augmentation
- Budget Management
- Procurement, Inventory Management & Control;
- Plant Engineering;
- Environmental Compliance, including requirements related to:
 - All existing and applicable permit requirements
 - Consent Decree
 - State Implementation Plan
- Completion of Critical Repairs to assure the units' reliability, availability and efficiency;
- Completion of Major Maintenance Projects
- Plant de-activation, de-commissioning and clean-up;

1.0 Management

The CONTRACTOR shall be responsible for the overall management of the plant as well as the management of the plant staff. The CONTRACTOR shall oversee the implementation and completion of all operations and maintenance activities, especially those necessary to maintain reliability, high availability, and efficiency.

2.0 Procure OEM & Non-OEM Support as Required

The CONTRACTOR will be required to procure all OEM and Non-OEM assistance it requires to support the daily operation and maintenance of the plant. GPA personnel may assist the CONTRACTOR with issues and historical perspective, but the CONTRACTOR will primarily be responsible for obtaining OEM and Non-OEM Support.

3.0 Working Capital and CONTRACTOR Expenses

The CONTRACTOR is responsible to fund all operation & maintenance expenses, inventory management and procurement expenses, as well as expenses for implementing and completing projects related to plant life extension, meeting performance guarantees, and maintaining reliability and efficiency. The CONTRACTOR shall be reimbursed by the Authority upon

successful documentation of such expenditures, following the guidelines for compensation as delineated in GPA's policies and standard operating procedures.

The CONTRACTOR shall have sufficient working capital to support its cash flow requirements including any cash flow requirements associated with its operations and maintenance (O&M), inventory management and procurement responsibilities and critical projects for ensuring availability, efficiency and reliability. The minimum working capital acceptable during each contract period shall be no less than 50% of the O&M budget allotted by GPA for the Power Plant for the respective period.

All CONTRACTOR direct and indirect expenses and taxes, including all CONTRACTOR employees related expenses and taxes are the sole responsibility of the CONTRACTOR.

4.0 Budget

The CONTRACTOR shall optimally manage the Operation and Maintenance Spending (O&M Spending) not to exceed the authorized budget amount for each contract year. The CONTRACTOR shall provide appropriate justifications and auditable records of all O&M procurement activities. Any O&M spending beyond authorized limit shall be justified by the CONTRACTOR with proper and sufficient supporting documentation and shall follow the appropriate GPA review process for approval or disapproval. Spending above the approved budget that is not authorized by GPA shall be the sole financial responsibility of the CONTRACTOR.

O&M Spending excludes Cabras 1&2 Employees' base salaries, premiums and benefits, and overtime. The CONTRACTOR shall optimize overtime spending to lower total plant costs. As a guide, overtime for Cabras 1&2 Employees shall not exceed 15% of Annual O&M Budget and overtime can be funded in addition to the current O&M spending budget provided by GPA (refer to Amendment III Q&A 11). However, exceptions may be made during emergency response for force majeure situations, such as Typhoon Recovery and other critical support periods, which do not constitute normal operations. The allowance for overtime during these situations will require approval from GPA. The CONTRACTOR shall report overtime expenses to GPA monthly and at the end of each contract year, and the report shall include details of overtime such as justifications, overtime work details and related information.

The CONTRACTOR shall track all O&M costs. The CONTRACTOR shall be required to submit a report of O&M spending to GPA monthly and at the end of each contract year. The report shall illustrate O&M Spending, including Overtime Spending, and shall include details and justification for each item. Justification is particularly important for items exceeding the budget.

The CONTRACTOR will prepare and submit to GPA a three-year plant budget beginning with the next fiscal year by March 31 of each contract year, in accordance with and following the schedule for GPA's Budget Approval Process.

GPA shall authorize the proposed O&M spending budgets for each contract year by the CONTRACTOR. GPA reserves the right to negotiate bid amounts prior to contract commencement. The negotiated amounts shall establish the maximum spending limit for

O&M expenses. GPA shall review and negotiate the next fiscal year budget with the CONTRACTOR by June 30 of each contract year.

GPA will make timely reimbursements to the CONTRACTOR for the expenses incurred by the CONTRACTOR in conjunction with the CONTRACTOR's O&M procurement responsibilities. The CONTRACTOR shall include certifications, receipts, and proof of payment and delivery on site of materials and services to be entitled for reimbursable compensation. The CONTRACTOR shall invoice GPA for these expenses no more than once monthly. Cost-plus reimbursement shall not be allowed. There shall be no additional costs or fees for reimbursement of O&M expenses.

5.0 Guarantees, Incentives and Penalties

The CONTRACTOR shall be guided by the Guarantees as discussed in Section 7 of this document. To ensure optimum performance as well as efficient operation and maintenance of the plant, GPA shall apply incentives and penalties as discussed in Section 8 of this document.

6.0 Plant Engineering and Technical Services

The CONTRACTOR shall provide plant engineering and technical services for the following:

- Regular O&M activities
- Critical Repairs to ensure proper and optimum operation of the power plant up to the commencement of operation of GPA's new power plant, including structural integrity, compliance with all required environmental and safety regulations, such as the Fire Code and Environmental Permits;
- Major Maintenance Activities, including but not limited to major maintenance for the RO-EDI System and Fire Suppression Systems;
- Power Plant de-activation, de-commissioning and clean-up

7.0 Contractor Staffing

The plant organization shall be composed of CONTRACTOR Management and GPA Plant Staff. The CONTRACTOR shall utilize all Cabras Units #1 and #2 Steam Power Plant employees beginning on the Commencement Date and continuing through the Termination Date of the Contract.

The CONTRACTOR shall provide appropriate staffing levels of CONTRACTOR employees to provide overall plant management, resident technical expertise for steam power plant operation and maintenance, procurement & inventory control, engineering, and administrative support as necessary. The Technical Scoring will evaluate the CONTRACTOR's proposed staffing level.

8.0 GPA Staffing

The Cabras #1 & #2 plant currently has forty-one (41) Full Time Employees (FTEs). Schedule D has an organization chart illustrating the staffing pattern.

9.0 CONTRACTOR Staffing Responsibilities

The CONTRACTOR has the responsibility to ensure adequate plant staffing, and shall manage and adjust, with GPA's approval, for optimal operation and maintenance of the plant. The CONTRACTOR shall regularly report on the adequacy of staffing levels. If there are vacancies required to be filled, CONTRACTOR shall request GPA to hire replacement(s). In case GPA is unable to hire the replacement(s), GPA may request the CONTRACTOR to fill the position by direct hire(s). Upon receipt of this notice, the CONTRACTOR may hire personnel, upon mutual agreement, to replace GPA employees at wage rates and benefits subject to approval by GPA. Reimbursement shall only be for the period of time CONTRACTOR-hired employees are employed and performing work up to the termination date of their employment with the CONTRACTOR. The cost for hiring additional personnel will not go against the CONTRACTOR's O&M budget. Salaries, wages and benefits of any additional employee hired by the CONTRACTOR shall be based on prevailing rates specified by US Department of Labor rates and shall be reimbursed by GPA.

a. Line Management Responsibility

The CONTRACTOR management is responsible for supervising the classified work force of Cabras Units 1&2 Steam Power Plant. The CONTRACTOR shall consult and coordinate with GPA to establish work rules, assign and direct the work of the GPA work force, make work schedules, establish safety procedures, prescribe training and approve attendance at training, and any other necessary management actions in performing the requirements of this contract.

The CONTRACTOR shall have discretion in selecting methods and means in the management of GPA employees to accomplish the repair, operation, and maintenance of the plant.

b. Chain of Command

The CONTRACTOR, in dialog with and with the consent of GPA, will be responsible for creating an appropriate reporting structure.

c. Employee Performance Review

The CONTRACTOR will have the authority and discretion to counsel or issue written warnings to individual employees for unsatisfactory work performance and violations of work rules, conduct rules, safety procedures, or other conduct the CONTRACTOR determines to be detrimental to the safe and efficient repair, management, operation, and maintenance of the Cabras Power Plants.

In its sole discretion, GPA may take disciplinary actions, as it deems appropriate. The CONTRACTOR shall cooperate and assist GPA by providing such witnesses and evidence as GPA may reasonably request to support any disciplinary action.

The CONTRACTOR may request disciplinary action but shall not have authority to initiate or direct disciplinary action against any individual GPA employee; provided, however, that GPA shall use its best efforts to proceed promptly, diligently, and thoroughly to process

all requests and take such disciplinary action as requested by the CONTRACTOR if reasonable under the circumstances, including, but not limited to the immediate suspension of GPA employees during the notice period of GPA's disciplinary procedures, or diverse action, if their continued presence would interfere with the safe and efficient operation of Cabras Plants or the safety and health of persons or if the suspension was necessary to eliminate the possibility of deliberate damage to equipment, property, or important documents.

In addition, the CONTRACTOR will provide input for setting annual personnel development goals. The development goals setting made by the CONTRACTOR does not replace the formal performance reviews performed by GPA supervisors. However, they provide one of the key inputs to the formal GPA review process. These CONTRACTOR inputs will drive promotion and demotion decisions and standards for job performance. Documentation of both good and unacceptable employee performance shall be the responsibility of the CONTRACTOR.

d. Manage Scheduling of Leave Time

CONTRACTOR will coordinate with GPA on the scheduling of vacation, holiday and other leave time to minimize overtime and other O&M costs, subject to the constraints of GPA Leave Policies and in accordance with Personnel Rules & Regulations, public laws and executive orders as amended or established. The CONTRACTOR will also have authority to schedule extended hours, staggered hours, flexible hours and Sunday working hours as the CONTRACTOR may determine necessary to ensure the safe and efficient management, operation, maintenance and repair of the Cabras Plants. The CONTRACTOR shall not unreasonably deny employee requests for authorized absence. The CONTRACTOR's disapproval of GPA employee requests for authorized absence shall be based solely upon scheduling needs to ensure the safe and efficient repair, management, operation, and maintenance of the plant.

e. Overtime

In the event that CONTRACTOR requires GPA personnel to perform overtime, CONTRACTOR shall follow established GPA personnel rules and regulations, policies and procedures, guidelines, and applicable local and federal laws in the requesting and reporting of overtime.

f. Safety Compliance Personnel

The CONTRACTOR will provide their own safety equipment and test procedures for areas such as air quality monitoring. This is specifically referring to the confined / enclosed space issues as defined by OSHA/GOSHA. The CONTRACTOR will not rely on GPA for these type of services unless in the case of an emergency. However, all safety equipment and test procedures shall be reviewed and approved by GPA Safety Division.

The CONTRACTOR shall allow GPA Safety Division Inspectors to conduct periodic scheduled and unscheduled facilities inspections to detect potential hazards so that proper remediation activities can be implemented. GPA Safety Division Inspectors shall

document and forward all inspection results through GPA and the CONTRACTOR chain of command.

g. Occupational Safety and Health / Equipment Clearance System

The CONTRACTOR shall design the training program in a manner that will instruct employees in the safe and healthful performance of their work. The CONTRACTOR shall tailor this training and evaluation to the employee's job requirements and level of responsibility. The CONTRACTOR shall keep all Occupational Safety and Health training records for the contract duration. As a minimum, the training records shall indicate the following information:

- Subject matter;
- Duration; start and stop time;
- Names of attendees;
- Date of Training.

The CONTRACTOR will develop and train employees on the use of and establish their own equipment clearance system. This clearance system shall apply to all equipment associated with units 1 & 2 except for the following:

- 1) The line of demarcation regarding the high voltage transformer and natural areas of O&M responsibility shall be defined; and,
- 2) Some overlap of equipment commonly used for combined systems such as the oil handling or condensate production that may require careful coordination.

This training shall adhere to the OSHA/GOSHA mandated training program particular to the employees' job and environment, operating practices and procedures with a practical understanding of prevention strategies.

The CONTRACTOR shall ensure that all employees, upon assignment to positions involving potential exposures to hazardous or toxic substances, including asbestos exposure equal to or exceeding the permissible exposure limits (PEL) undergo proper medical examination and are entered into a medical surveillance program as required by GOSHA.

The CONTRACTOR shall ensure that all employees assigned to positions involving potential exposures to hazardous or toxic substances are issued and are required to wear equipment and/or devices such as:

- Welding or wire mesh gloves;
- Respirators;
- Hard hats;
- Goggles;
- Foot protection;
- Face shields;
- Rubber gloves and coveralls;
- Safety glasses.

h. Disciplinary Action Documentation

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The CONTRACTOR will document and forward recommendations of any suggested disciplinary action to the Assistant General Manager of Operations. All recommendations for disciplinary action must comply with requirements set forth by the GPA Personnel Rules & Regulations, Civil Service laws and other administrative policies as amended or established. The Assistant General Manager of Operations will forward such recommendations to the General Manager of GPA for further disposition as required.

i. Dispute Resolution Process Usage

Should the CONTRACTOR have a problem that is not resolved to their satisfaction, regarding personnel or disciplinary action, it will have the right to have the issue reviewed as part of the dispute resolution process.

j. Responsibility for Direct Hires from Outside the Guam Power Authority

CONTRACTOR may participate in the interview and selection process of any and all new Cabras Units #1 & #2 employees for positions not filled by the normal internal transfer of employees by GPA but rather through direct hire from the outside labor pool. The CONTRACTOR will have a voice in the interview and selection process of the new employee, including but not limited to the use of standardized aptitude testing.

This action is subject to the standard Government of Guam hiring practices in accordance with local and federal laws, personnel rules and regulations, and other administrative orders, policies and procedures.

k. Utilization of Contractors/Consultants and/or Staff Augmentation

The CONTRACTOR may, at any time, in consultation with GPA, have CONTRACTOR employees or consultants perform functions, duties, and responsibilities at Cabras Units #1 & #2 power plant as CONTRACTOR determines in accordance with the scope of this contract. Reimbursement for salaries and benefits shall be based on the rates approved by GPA. Reimbursement shall only be for the period the CONTRACTOR hired Employees/Consultants are employed and performing work up to the termination date of their employment/contract with CONTRACTOR.

l. Cooperation with GPA Personnel Administration

CONTRACTOR shall cooperate with GPA in GPA's personnel administration to the extent that CONTRACTOR has a role in the supervisory process.

9.1 Guam Power Authority Staffing Responsibilities

a. Human Resources

GPA shall perform all personnel administration functions for GPA employees assigned to the Cabras Steam Power Plant.

GPA shall have access to its employees assigned to the Cabras 1 & 2 plant for the purpose of performing its administrative functions. Personnel administration functions shall include, but not be limited to:

- 1) Computation and payment of compensation as authorized by administrative laws, rules, policies and procedures; GPA shall retain its standard responsibilities for all GPA employee payroll expenses and disbursements;
- 2) Administration of sick leave, maternity leave, paternity leave, annual leave, military leaves of absence and such other programs providing GPA employees authorized absences;
- 3) Recruitment, examination and appointment of new hires;
- 4) Administration of employee benefit plans, health insurance, retirement plans, worker compensation plans, the Drug Free Workplace Policy, and such other programs for the welfare of GPA employees;
- 5) In-service training programs and such other training programs for which GPA employees are eligible; and,
- 6) Such other personnel matters not related to the maintenance, operation, and repair of the Transportation section.

b. Select, Provide, Promote and Demote All Classified Employees

GPA shall select, provide, promote and demote all classified employees for normal operation and maintenance of the plant, in accordance with Civil Service Commission policies, personnel rules and regulations, administrative orders, local and federal laws.

The CONTRACTOR may submit recommendations for promotions and demotions of classified employees.

c. Administer Salary, Benefits & Disciplinary Actions

While GPA is not responsible for the direct line management of the O&M, it is responsible for functions such as disciplinary action. All salary and benefit administration will continue to be the responsibility of GPA, consistent with other standard practices. GPA will continue to have the same responsibility to enforce disciplinary action type issues as present.

d. Cross Training of Transitional Employees

The responsibility for any cross training of transitional employees will reside in the GPA divisions that utilize them, in cooperation with the CONTRACTOR as part of the training program for the employees.

e. Grievance Reporting Procedure and Arbitration

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GPA will provide copies of the Grievance reporting and resolution procedures to the CONTRACTOR. Disputes will be handled in accordance with the existing GPA policies. GPA will develop a specific process of handling higher-level disputes between the CONTRACTOR and GPA personnel. Costs associated with disputes requiring payment to non-CONTRACTOR employees may require the CONTRACTOR to adjust the monthly invoice payments.

f. Disciplinary Actions and Procedures, Including Poor Performance

GPA will be responsible for administering disciplinary actions against GPA employees per GPA standard policies and procedures. GPA management will determine and apply the degree of penalty to employees as appropriate.

Should the CONTRACTOR's O&M activities be impacted, then the degree of required payment will be discussed with GPA and possibly adjusted to reimburse the CONTRACTOR for only fair losses, not to include the loss of production or electrical output.

g. Communicating of Reporting Structure

GPA shall communicate and inform all employees of the newly adopted and reporting system and the associated process to handle and resolve any possible future disciplinary action processes.

h. Replacement of Employees

GPA shall use best efforts to replace all employees who resign, retire, transfer or upon any official personnel action that will cause departure.

In cases of emergency, GPA, may at its discretion, assign GPA employees on a temporary basis to the Cabras Units #1 & #2 Steam Power Plant until vacant positions are filled with permanent employees. GPA shall notice the CONTRACTOR thirty (30) days prior to the final replacement date that its best efforts to replace employees were unsuccessful.

Upon receipt of this notice, CONTRACTOR may hire personnel, upon mutual agreement, to replace GPA employees at wage rates and benefits subject to approval by GPA.

i. Guam Power Authority Employee Payroll

GPA shall retain its standard responsibilities for all employee payroll expenses and disbursements.

9.2 Resource Allocation of GPA Central Maintenance Personnel

The CONTRACTOR is highly encouraged to optimize the use of Central Maintenance personnel subject to GPA's specified minimum and maximum acceptable performance standards. GPA shall provide reasonable support from the Central Maintenance Section to the CONTRACTOR under the direct authorization of the Manager of Generation.

9.3 Resource Allocation of GPA Engineering and Planning Personnel

At the CONTRACTOR's request, GPA may supply engineering and planning personnel services as required on a case-by-case basis consistent with the GPA's mission and availability of staff and skill sets.

9.4 Training

The CONTRACTOR shall be responsible for all training and associated costs necessary to perform contract obligations and adhere to regulatory requirements such as OSHA or GOSHA. The CONTRACTOR shall include estimated training costs in their proposal for GPA's consideration and approval.

The CONTRACTOR shall retain training records and certificates of all GPA employees under CONTRACTOR management. The CONTRACTOR shall submit copies of GPA employees' records, including but not limited to certificates, recordings of actual training hours per event (for all training types), individual training assessments, progress reports, evaluations, and other related documents upon completion of each training activity for filing into employees' official personnel files. Upon CONTRACTOR's completion of Contract, all original documents, i.e. training certificates, recordings of training hours, individual assessments, progress reports, evaluations and other related forms will be turned over to GPA Human Resources Division.

9.5 Operation of Cabras Units 1&2 Steam Power Plant

The CONTRACTOR is required to perform and manage all operational responsibilities for the Cabras Units 1 & 2 Steam Power Plant, which include Plant Operation Responsibilities and Requirements as specified in this bid document.

The CONTRACTOR shall manage, oversee, and perform all duties and responsibilities related to the proper and efficient management of the power plants. This includes but is not limited to duties specified in the Technical and Functional requirements, current SOPs, manufacturer SOPs, and all other duties as assigned by the GPA General Manager and his designee.

At the direction of the GPA General Manager or other GPA stakeholders, the CONTRACTOR may also be requested to undertake activities that impact the operation of the plant. Such projects will follow GPA's standard procedures for approval, budgeting and implementation.

9.6 Unit Operating Information

The CONTRACTOR shall provide regular reports on unit commitment and unit operations to GPA management and all divisions identified as requiring the information.

The Unit Commitment information shall include the following information for each generation unit:

- Heat Rate Variances (MBTU/MWh);
- Capacity Derations (MW); And,
- Upper and Lower unit commitment levels (MW);
- Forbidden Regions;
- Any Condition that may limit dispatching of the Unit.

Unit operation information shall be provided to the Generation division on a daily basis. The CONTRACOTR will recommend and justify to GPA the optimized load that the units can be operated on, subject to the review and approval of GPA.

9.7 Environmental Compliance

There have been recent updates and new requirements to the Environmental Regulations applicable to the Cabras Units #1 and #2 Steam Turbine Power Plant. GPA is required to comply with these update requirements. Until such time that GPA commences the plans to comply with certain requirements, CONTRACTOR will be responsible for ensuring the completion of activities currently required, which includes, but is not limited to:

- a. Compliance with the Consent Decree Requirements in the Fuel Switching Enforcement Action, such as enforcement of Fuel Switching Protocol;
- b. Conduct and complete required emissions tests;
- c. Monitoring of all emission tests and results and ensuring compliance with applicable rules and regulations;
- d. Record-keeping, documentation and review of emission test data;
- e. Completion of necessary corrective actions in order to meet emission requirements;
- f. Monitor all low-volume waste streams to be within compliance with all local, federal and international regulations;
- g. Completion of all activities required by the applicable Air Pollution Control Permit (FO-002), which will include:
 - Ensuring that all Emission Limits are not exceeded
 - Ensuring that all proposed control measures and/or equipment are installed and properly operated.
 - Ensuring that all control measures, equipment, facilities and systems installed or used to achieve compliance with terms and conditions of the permit are maintained in good working order and operated as efficiently as possible at all times, including startup, shutdown and malfunction.
 - Conduct proper Preventive Maintenance Procedures for the significant sources of emissions, in accordance with manufacturer's recommendations.
 - Implement adequate control measures approved by GEPA to prevent exceeding of any applicable ambient air quality standards during the operation of the facility.
 - Operate and maintain appropriate pollutions controls to minimize NOx Emissions from the generators such as water/fuel injection rate, sulfur content (refer to Section II.C of Permit).
 - Comply with all monitoring, testing, and recordkeeping requirements.
 - Comply with all Reporting Requirements and submit all requirements to GEPA in collaboration with GPA's Planning and Regulatory Division.
 - Ensure that Compliance Certifications are completed as required (Section II.J.).
 - Complete all Reporting Requirements and Fee Payments for Annual Emissions.
 - All other responsibilities under Permit No. FO-002
- h. Completion of all activities required by the applicable National Pollution Discharge Elimination System (NPDES) permit;

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- i. Completion of all activities required by the GPA and Federal Spill Prevention, Control and Countermeasure (SPCC) Plan, including implementation, monitoring and reporting;
- j. Remediation of all oil spill incidents to the satisfaction of local and federal regulatory bodies;
- k. Completion of all activities required by Best Management Practices (BMP) Plan;
- l. Completion and submission of all required reports;
- m. Record-keeping and maintenance of equipment as may be required, such as but not limited to the Fuel Switching System;
- n. Payment of all penalties from non-compliance with any and all environmental requirements from local and federal bodies, with the exception of the Guam State Implementation Plan and GPA Consent Decree;
- o. Payment of penalty or fines attributable or related to machinery or equipment malfunction for machinery or equipment already in operation at the power plant prior to commencement date, that was the result of an act of omission, or failure by CONTRACTOR to operate or maintain such machinery or equipment, or failure by CONTRACTOR to exercise due diligence in performing services included in the PMC.

9.8 GPA Planning and Regulatory Division

GPA's Planning and Regulatory Division (P&R) shall support the CONTRACTOR in meeting all environmental compliance requirements. P&R shall audit the CONTRACTOR on a regular basis as a means of monitoring and ensuring that all requirements are satisfied.

The CONTRACTOR shall coordinate all activities on Environmental Compliance, including records and reports, to P&R. The CONTRACTOR shall provide full cooperation during P&R's audits and monitoring activities.

9.9 Maintenance

The CONTRACTOR is required to perform and manage all Maintenance Responsibilities for Cabras Units 1 and 2 including but not limited to the Maintenance Responsibilities and Requirements as specified in this bid document.

The CONTRACTOR will be responsible for all equipment associated with the plant. Plant electrical maintenance personnel are only qualified to handle equipment with an operating voltage of 5000 volts and below. The CONTRACTOR shall be responsible for coordinating with qualified personnel to maintain, repair, and/or reset all other electrical equipment. Coordination with the GPA Transmission & Distribution division shall be done through the Generation Manager's office.

9.10 Use of the GPA Computerized Maintenance Management System

The CONTRACTOR shall utilize the functionality of the GPA CMMS. The CONTRACTOR shall provide a monthly report summarizing the scheduled and actual Maintenance Activities, and the data shall be available in the CMMS. This report shall also include comparisons of scheduled, actual, and manufacturer-recommended Maintenance Activities. ~~The report shall be~~

~~used to evaluate the CONTRACTOR's performance with regards to the maintenance of the plant.~~

9.11 ~~Operating Procedures Management, Improvement and Addition~~

~~The CONTRACTOR shall audit all operational procedures turned over at time of contract award, revise to proper "best in class" operating standards, train employees to the proper use of all procedures, audit employees to their use of all procedures and take corrective action of variances relating to operational performance deficiencies.~~

~~The CONTRACTOR shall also develop new operating procedures throughout the term of the contract as required, and grant GPA access rights to all procedures during the term of the contract for review, usage and possible replication at other operating units. All operating procedures generated by the CONTRACTOR will become the property of the GPA.~~

~~Annual reviews of all Operating Procedures shall be conducted to validate the applicability and effectiveness of the procedures as new technologies are introduced into the power plant, as part of modernization and improvement. Any reviews made shall be reported to GPA along with corresponding findings, updates, and revisions.~~

~~Two sets of Plant Operating Procedures (hard copy and soft files) will be kept at all times in the Cabras Steam and Slow Speed Diesel control rooms. One set each will be given to the following in formats agreed upon by GPA and the CONTRACTOR:~~

- ~~• Assistant General Manager, Operations;~~
- ~~• Manager of Engineering;~~
- ~~• Manager of Generation;~~
- ~~• Manager of Strategic Planning and Operations Research.~~

9.12 Physical Boundaries of Cabras 1&2

Maps identifying the physical boundaries of the Cabras 1&2 Power Plant are provided in the supporting documents. The CONTRACTOR will be responsible for the maintenance of all equipment, facilities and assets within the physical boundary of the power plants, including the structural integrity of the power plant and all equipment within its physical boundaries.

9.13 Management of Waste Oil and Waste Oil Facility

The CONTRACTOR shall dispose of waste oil in a safe manner consistent with GPA agreements, local and federal environmental regulations, and industry best practices. The CONTRACTOR shall train, assign, and manage normal shift personnel to this duty.

The CONTRACTOR shall also be responsible for the operation and maintenance of the Cabras 1 & 2 waste oil facility, and shall work with GPA's P&R division to ensure it is operated within the requirements set by local and federal regulatory requirements.

The CONTRACTOR shall also be responsible for working with other GPA Contractors that may need to access the waste oil facility. These contractors will be required to coordinate with

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the Generation Manager, his designee and the CONTRACTOR prior to starting work on the facility.

9.14 Operation and Maintenance of RO-EDI System and Maintaining Proper Water Quality

The CONTRACTOR shall be responsible for properly operating and maintaining the existing Reverse Osmosis – Electro De-Ionization System and ensure the plant is provided with emulsion water that meets quality standards at a low operational cost.

9.15 Optimization of Fuel Consumption

The CONTRACTOR shall comply with the criteria defined within the Quality Management Plan for Prudent Fuel Use and LEAC Plan for Performance Goals.

The CONTRACTOR shall comply with the requirements stated in the Fuel Switching Enforcement Action Consent Decree, and minimize the excessive use of Low Sulfur Fuel. The CONTRACTOR shall document Low Sulfur Fuel usage at all times and include justification for such usage. For use of Low Sulfur Fuel other than for adverse wind conditions, including but not limited to equipment problems or malfunctions, the CONTRACTOR must determine and correct the problem immediately. The event should be properly document, justified and reported to GPA by the next working day. The additional fuel costs associated with excessive use of Low Sulfur Fuel shall be paid for by the CONTRACTOR.

9.16 Maintenance of GPA's Wind Turbine Generator

GPA's pilot 275-kW Wind Turbine Generator (WTG) located in Cotal, Yona is currently in operation. Cabras 1&2 employees are in charge of the maintenance of the WTG and for securing the wind turbine when necessary. The CONTRACTOR shall coordinate with GPA and ensure that the employees assigned to maintain and secure the WTG complete the necessary tasks and activities in order to maintain the availability of the WTG and ensure it is running properly. Operation and Maintenance for the WTG shall be separate from the O&M of the Cabras #1 and #2 Power Plant and will be fully funded by GPA.

9.17 Maintenance of Transformers

The CONTRACTOR shall perform all transformer maintenance (predictive and preventive) and testing including dissolved gas analysis (DGA) for all transformers associated with the power plants. Maintenance on the large power transformers shall be coordinated with GPA's Transmission & Distribution division. The CONTRACTOR shall provide a report of maintenance activities and test results to GPA on a monthly basis.

Within the first 30 days of contract commencement, the CONTRACTOR and Generation Division will meet with GPA's Transmission and Distribution Division to discuss the schedule and requirements for Maintenance of Transformers. GPA will not require a minimum or maximum number of transformer tests per year however, any cost impact and operational impact due to transformer failure resulting from inadequate or unsatisfactory maintenance shall be the responsibility of the CONTRACTOR.

9.18 Instrumentation

The CONTRACTOR shall make full use of the Historian and available instrumentation to collect key performance information. Proponents must provide the list and periodicity of key performance data collected at similar plants under their operation. Additionally, each Proponent must provide what analyses are performed using this information. Hourly readings are not sufficient to fulfill this requirement. Proponents must ensure that all instruments that can be made capable of electronic download and storage are made capable of this function. All performance information must be made available to GPA for independent analysis. If required, the CONTRACTOR must provide any software, equipment, and training to Authority staff to access, manipulate and analyze this information.

All key performance information shall be archived appropriately in electronic form.

9.19 Power Supply for Start-Up

GPA will provide all power for Start-up and outage related activities.

9.20 Outage Planning and Optimized Outage Scheduling

The CONTRACTOR will coordinate the scheduling of all its outage requirements through the Manager of Generation who will, in turn, coordinate with the GPA Power System Control Center (PSCC). System demand will primarily dictate the optimal dates for scheduling outages. Major outage schedules must be established between GPA and the CONTRACTOR and planned far enough in advance that they will support quality outage planning efforts as described elsewhere.

The CONTRACTOR should coordinate with GPA in documenting the details of the outage and determining the effects to EAF and EFOR, for application in evaluations.

The CONTRACTOR will manage outages to the mutually agreed upon schedule, and is responsible for informing the Manager of Generation or his designee, and other divisions affected by the outage planned, for any changes in the outage schedule. Should this occur, the CONTRACTOR shall use its best efforts to work towards adhering to the originally agreed to schedule.

The outage schedule shall be provided by the Manager of Generation and his designee to other GPA divisions (such as PSCC, SPORD and Finance) for dispatching, fuel consumption forecasting, and such other analysis that requires plant outage schedule information. The schedule must account for planned and actual performance, as well as details for cases wherein planned outages deviated from original schedule.

9.21 Root-Cause Analysis and Critical Path Management

The CONTRACTOR shall be primarily responsible for root cause analysis and critical path management for all planned and unplanned outages.

9.22 Facility Maintenance and Improvement

The CONTRACTOR is responsible for the maintenance and improvement of all facilities within its physical boundary. Including, but not limited to the upkeep of property grounds, housekeeping services, and janitorial services. The maintenance and improvement shall be in a manner that is acceptable and satisfactory to GPA. Facility maintenance and improvement will be evaluated regularly and shall be included in the evaluation of CONTRACTOR performance.

Projects requiring immediate action shall be determined jointly by GPA and the CONTRACTOR, through an assessment to be done after contract commencement.

The proposed improvements will become the basis for further refinement of the O&M Expense Budget. GPA and CONTRACTOR representatives will annually determine and negotiate which items GPA will fund for the next fiscal and contract year.

9.23 Identification and Approval of Projects

The CONTRACTOR is responsible for Critical Repairs and Major Maintenance projects to ensure proper and optimum operation of the power plant up to the commencement of GPA's new power plant. A list has been provided for the activities planned for FY 2020 for reference but should not be interpreted as the only projects needed for the plant.

The CONTRACTOR, upon commencement of the contract, is responsible for identifying and recommending projects to GPA. The list shall be submitted to the Generation Manager and/or his designee, for their review together with the CONTRACTOR upon contract commencement. The project list and supporting information will then be forwarded to GPA Executive Management for review and approval. Projects shall not commence until after approval is received.

The project list shall be reviewed and updated monthly or as frequently as projects are required.

9.24 Project Management

The CONTRACTOR shall accept project management duties for all critical repairs and Major Maintenance Projects, and other projects related to reliability, availability, and efficiency. Should the CONTRACTOR elect to hire a third party to perform this activity, the CONTRACTOR will be fully responsible for the third party's actions, performance and payment under the CONTRACTOR's Annual Management Fee. Payment for such election is not reimbursable by GPA.

9.25 Field Installation

The CONTRACTOR bears the responsibility for field installation-type activities of all assigned projects. Should the CONTRACTOR elect to hire a third party to perform this activity, the CONTRACTOR will be fully responsible for the CONTRACTOR's actions, performance and payment.

9.26 Acceptance Testing

The CONTRACTOR will be responsible for performing acceptance testing for life extension, reliability, availability, and efficiency projects. Acceptance testing must include a detailed written planning document with structured and non-structured procedures with pass/fail criteria for all important elements of the project. The CONTRACTOR shall submit electronic and hard copies of the proposed acceptance test document sufficiently in advance of actual testing. The Authority shall provide a timely review and approval of these documents in a reasonable time frame.

9.27 Guam Power Authority Recommended Projects

GPA shall provide the listing of recommended projects to the CONTRACTOR. The initial listing will contain activities to be performed over a multi-year time frame. GPA and the CONTRACTOR shall evaluate the list and mutually agree to the overall priority and scheduling of these activities.

The goals of 1) safety and insurance issues 2) maintain or improve plant reliability and availability 3) improvement of plant efficiency 4) minimization of total cost to GPA, and 5) effective outage scheduling, shall drive the project activities and their schedule.

9.28 De-activation and/or De-commissioning of the Power Plant, including Clean-up of the Facility

GPA defines deactivation as the shutdown of the plant to include disconnection of interconnection, draining of all tank systems, lubrication and chemicals, and removal of all waste including hazardous waste. Decommissioning would include tear-down, salvage, and disposal of all plant equipment as well as clean-up of the entire facility. As part of GPA's integrated resource plan, and to ensure continued compliance with environmental requirements such as the applicable Consent Decree and State Implementation Plan, the Cabras 1&2 power plant will be de-activated at the earliest on December 31, 2021.

The CONTRACTOR will be required to provide a De-activation/De-commissioning Plan and Proposal to GPA. If awarded the contract, GPA and the CONTRACTOR will further refine the proposal and put together a practical and cost-effective De-activation or Decommissioning Plan subject to approvals such as from the CCU and PUC. Once approved, the CONTRACTOR shall complete this plan in coordination with GPA's Generation Division and support divisions such as Planning & Regulatory Division.

At a minimum, CONTRACTOR shall be responsible for cleaning known spills or leaks as part of the de-activation process. CONTRACTOR will also be tasked to complete an equipment list and inventory list and propose a plan for salvaging or disposing key items.

9.29 CONTRACTOR Procurement Responsibilities

a. Operations and Maintenance Procurement Outsourcing

The CONTRACTOR shall implement procurement methods to ensure cost controls remain within the authorized O&M Spending Budget. The CONTRACTOR shall allow GPA

access to all procurement and cost records. All procurement and cost records and processes are subject to audit by GPA.

b. Recommend & Pre-qualify Vendors for Authorization

The CONTRACTOR shall provide a listing of those vendors who they have experienced solid success with and wish for GPA to invite to bid on upcoming work required by the CONTRACTOR. This will expand the normally available pool of high quality vendors and ensure these vendors are informed of GPA's intent to bid.

c. Procure Operating & Maintenance Supplies

The CONTRACTOR will require normal as well as special materials to support the operation and maintenance of the facility. These supplies in most cases will be pre-qualified and approved in the budget process. Those items that are pre-qualified and approved will be processed through the normal CONTRACTOR directed process. The CONTRACTOR will obtain the best terms, conditions, pricing, and availability to meet the needs of the power plants and ensure high levels of reliability as well as keep outages to a minimum.

d. Third-Party O&M Outsource Contracts

The CONTRACTOR may utilize external third-party resources to support the O&M needs of the plant. The CONTRACTOR will direct the procurement functions as required and utilize whatever third-parties necessary. The CONTRACTOR will be responsible for payment to these third-parties and shall obtain the best terms, conditions, pricing, and availability to meet the needs of the power plants and ensure high levels of reliability.

e. Create or Improve Procurement Procedures to Expedite Repairs

The CONTRACTOR shall develop its own internal procurement procedures to support the purchase and acquisition of emergency materials and professional services. The CONTRACTOR will direct the procurement functions as required and utilize whatever outside resources necessary. The CONTRACTOR shall be responsible for payment of these outside contractors and obtain the best terms, conditions, pricing, and availability to meet the needs of the power plants and ensure high levels of reliability.

9.30 Guam Power Authority Procurement Responsibilities

a. Fuel Procurement and Delivery, Including Quality Assurance

GPA will provide procurement and delivery services of fuel to the CONTRACTOR for Cabras 1 & 2 Power Plant. This service will guarantee the fuel's supply and quality in such a manner that it will not disrupt the normal operation of the plant. Problems with the fuel's quality, if any, shall be well documented and submitted by the CONTRACTOR to GPA, along with the cost impact and any problems.

GPA will cover all costs associated with the delivery of required fuels, and guarantee uninterrupted fuel delivery.

Fuel analysis conducted by GPA through its contractors will be accepted as the sole authority on all fuel issues.

b. Local Vendors

As requested, GPA will provide a complete listing of all vendors, suppliers and consulting organizations utilized in the past two years, to the CONTRACTOR for their consideration and use. The listing shall include company name, address, and phone and fax numbers. A summary of the basic services provided will be included in the listing of vendors and any basic rates charged to GPA in the past two years.

GPA will determine and create a listing of those vendors it has authorized and recommends to perform services as well as supply goods for the CONTRACTOR. This listing shall contain only those vendors who have actually performed work in the past two years and who have achieved good performance ratings.

9.31 Inventory Management

a. Maintain Required Spare Parts Inventory

The CONTRACTOR shall be responsible for the management of the spare parts inventory for Cabras 1&2 Power Plant. This responsibility requires the CONTRACTOR to manage and replace all spare parts, materials, parts, components and equipment currently in stock as it is used in the facility. It also requires the CONTRACTOR to be responsible for the security and proper storage of the spare parts, and for the replacement of any losses.

The CONTRACTOR shall repair large items removed from stock such as motors, pump assemblies, circuit breakers, etc. to "like-new" condition. The items shall be returned to stock if the repair option is the best option in support of the plant's operation. If the original item is not repairable, then new or "like-new" equipment or parts must be procured by the CONTRACTOR to replenish the stock items.

The CONTRACTOR is required to complete Annual Inventory Counts and report the prior year and current year's inventory to GPA, for each contract year. Standards for inventory valuation and item count currently used by GPA may be adopted.

The CONTRACTOR shall determine whether items in the inventory are active or inactive. The CONTRACTOR may sell off the inactive items if they have no value to GPA or the power plant, and only after it has secured GPA's agreement to do so. The CONTRACTOR shall use proceeds of the sale to secure needed items for stock.

The CONTRACTOR shall take all active inventory items and tie them to the equipment as listed in the CMMS. This activity will assist planners in better matching materials to maintenance requirements

All inventory at the beginning and end of the contract duration will be the property of the GPA.

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b. Recommended Tasks for Inventory Optimization

The CONTRACTOR shall be responsible for optimizing the inventory for Cabras Units #1, and #2, through completion of the following tasks:

- Review and provide a recommended list of spare parts and inventory requirements for all systems associated with the Cabras 1&2 Steam Power Plant;
- Determine inventory requirements to ensure continuous rotation, refurbishment, and/or replacement of parts;
- Identify and make necessary adjustments to the existing safety stock levels and ordering schedules;
- Track and account for all inventory proceedings;
- Ensure parts specifications are updated for system upgrades.

c. Quality of Refurbishing of Stock Items after Usage

The CONTRACTOR shall carefully consider the quality of all refurbishment activities performed on items returned to stock. The quality of repairs often times will not be realized until the component is placed into service. The CONTRACTOR shall keep a record of any associated warranties and request extended warranties where applicable based on commencement from in-service dates and not delivered dates. All warranties shall be transferred to GPA at the end of the contract period.

d. Account for the Location of Specialized Tools & Assets

The CONTRACTOR and GPA shall perform an inventory of all tools, non-stock parts, material and equipment assigned to the plant, at the time of turnover of management responsibilities. The CONTRACTOR will be responsible for the safe use and control of all tools during the contract term. Should additional tools or equipment be required, the CONTRACTOR may first request to use tools from the Central Maintenance section or other GPA sites. However, GPA is not obligated to supply such tools or equipment if they are needed for other GPA projects. The CONTRACTOR may be required to secure tools and equipment on its own to support plant operations and maintenance.

e. Inventory Proceedings

GPA and the CONTRACTOR shall discuss and agree, in writing, on all inventory proceedings.

Prior to any decision not to reorder any stock item, both parties must fully discuss the matter and must agree to such decisions in writing. If both parties mutually agree not to reorder an item, the CONTRACTOR must still keep detailed records for future usage in the event that the item is required in future years. These records must accompany a copy of the written agreement of both parties. The records must continue to reflect the equipment details in order to support reordering. The CONTRACTOR shall not remove these items from the inventory master listing. However, the CONTRACTOR must code these items to reflect the inventory level at zero.

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f. Inventory Issuance Process

GPA and the CONTRACTOR shall discuss and agree, in writing, on the Inventory Issuance Process to be followed.

The current method shall be established as a Baseline Process, and may be adopted or revised upon contract commencement, so long as it is properly discussed and approved by GPA and the CONTRACTOR.

g. Guam Power Authority Inventory Responsibilities

GPA shall inventory all tools, equipment and vehicles, and develop a master inventory listing prior to the arrival of the CONTRACTOR. GPA shall continue to provide warehouse supervision as currently being provided.

APPENDIX B: ANNUAL MANAGEMENT FEE AND O&M BUDGET

Contract Year	Annual Management Fee	O&M Budget
1	\$ 1,915,037.00	\$ 1,350,000.00
2	\$ 1,972,488.00	\$ 1,350,000.00
3	\$ 2,031,663.00	\$ 1,350,000.00
TOTAL	\$ 5,919,188.00	\$ 4,050,000.00
Base Period Total Cost		\$ 9,969,188.00

Extension Year Option	Annual Management Fee	O&M Budget
1	\$ 2,092,613.00	\$ 1,350,000.00
2	\$ 2,155,391.00	\$ 1,350,000.00
TOTAL	\$ 4,248,004.00	\$ 2,700,000.00
Extension Period Cost		\$ 6,948,004.00

Base + Extension Periods	\$ 16,917,192.00
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APPENDIX C: GUARANTEES

The CONTRACTOR is required to comply with GPA's performance guarantees and consumption guidelines as described in this section and in GPA-035-20 and subsequent amendments.

Section 1: EQUIVALENT AVAILABILITY

For contract guarantee purposes, the Equivalent Availability Performance Measure shall be measured for each contract year by:

- Measuring the individual unit equivalent availability factor (EAF) expressed in percentage for each unit (Cabras 1, Cabras 2) for the contract year;
- Verifying the EAF reported by the CONTRACTOR with GPA's calculations based on reports submitted to the Generation Division and PSCC.

EAF shall be reported daily, weekly and monthly, as required by GPA's Generation Division.

The individual unit equivalent availabilities shall be calculated in accordance with standard NERC GADS definitions based on actual unit availabilities and outages, including the effects of all full and partial, scheduled and maintenance outages, and planned and forced deratings.

GPA sets its Minimum EAF Guarantee as follows:

Table 2: GPA Minimum EAF Requirements

Contract Year	Cabras 1	Cabras 2
1	85%	85%
2	85%	85%
3	85%	85%
4	85%	85%
5	85%	85%

Adjustment to the maximum capacity shall be made based on Maximum Capacity for dispatched established by GPA and the PMC at the start of the Contract Year. Each unit is currently capable of 55-60 MW, instead of the nameplate capacity of 66 MW. EAF shall be calculated based on this maximum capacity.

Measurement shall be consistent with procedure as described in this document, and as specified in other sections of this IFB. Actual Performance shall be compared with the minimum performance guarantee, and shall be subject to bonuses and penalties as applicable.

Section 2: EFOR

For contract guarantee purposes, the Equivalent Forced Outage Rate Performance Measure shall be measured for each contract year by measuring the individual unit equivalent forced outage rate (EFOR) expressed in percentage of each unit for the contract year. EFOR shall be reported daily, weekly and monthly, as required by GPA's Generation Division. The individual unit equivalent forced outage rate shall be calculated in accordance with standard NERC GADS definitions.

Section 3: HEAT RATE AND EFFICIENCY

The Cabras Units are currently required by the Guam PUC to have a minimum Gross Heat Rate of 9,600 BTU/KWH. Each unit shall be required to meet or perform better than the Gross Heat Rate requirements required by GPA. The CONTRACTOR and GPA shall establish the baseline Heat Rate for each unit by evaluating the last 12-months' actual heat rate prior to the contract commencement period in BTU/KWH and calculating the average heat rate (BTU/KWH) for the year. The CONTRACTOR and GPA will track improvement in or compliance with required Gross Heat Rate performance by evaluating overall performance for each unit corresponding to GPA's LEAC periods.

In addition to Gross Heat Rate, each unit is required to track Gross and Net Efficiency (KWH/gal) and include in regular (daily, monthly) reports. The CONTRACTOR and GPA will track improvement in efficiency by evaluating the 12-month running gross and net efficiency.

For Heat Rate and efficiency improvements that are sustained in a 12-month rolling period, GPA will share equivalent savings in fuel costs with the CONTRACTOR.

However, Gross Heat Rate exceeding 15% (in BTU/KWH) of the established baseline shall be subject to penalties.

Section 4: AVERAGE FUEL PRICES

GPA shall determine actual monthly average fuel prices in \$/Mbtu for #6 high sulfur oil, #6 low sulfur oil and diesel (#2) oil based on documented purchase costs and sample heat content measurements. Such determinations shall exclude the effects of financial hedges unless such hedges directly impact the incremental cost of fuel, i.e. the cost of the last Mbtu of fuel burned.

Average fuel prices for each contract year shall equal the weighted average of the monthly prices, where the weighting factors are the actual monthly system-wide fuel consumption in Mbtu. The average fuel price for #6 oil for the contract year shall be the weighted average of the contract year average fuel prices of #6 high sulfur and #5 low sulfur fuels, where the weighting factor is the fiscal year system-wide MBTU consumption of each of the fuel types.

APPENDIX D: INCENTIVES AND PENALTIES

Incentives and penalties shall apply to the following:

- Equivalent Availability Factor (EAF)
- Net Heat Rate
- Gross and Net Efficiency

as specified in this section, and in GPA-035-20 and subsequent amendments.

Section 1: EAF Performance Measure

The PMC shall assure that the Cabras #1 and #2 Units achieve high equivalent availability factors (EAF). The CONTRACTOR shall track and compute the EAF for each unit as defined by the North American Electric Reliability Council (NERC) or its successors. The EAF computation shall be computed up to two decimal places.

Should plant unavailability be caused by any factor which is completely and totally beyond the control of the CONTRACTOR, such as *force majeure*, catastrophic equipment failure or unavailability solely caused by the failure of GPA to provide sufficient manpower, fuel or water, GPA and the CONTRACTOR shall meet and discuss appropriate adjustments in accordance with the following procedures:

- EAF credit shall start from the determination of the root-cause of the outage and terminate when the unit is restored into service, except for *force majeure* events, where the EAF shall start upon the occurrence of such event; and
- Throughout the EAF credit period, the outage unit shall be assumed to be in the pre-failure unit condition as per the NERC guidelines.

The Equivalent Availability Performance Period shall commence from the CONTRACTOR's contract commencement date to the first anniversary of the commencement date. Subsequent performance periods shall fall between contract commencement anniversary dates except for the last contractual year where the performance period is the contract termination date. The Minimum Equivalent Availability Performance Guarantees required by GPA are:

Minimum Equivalent Availability Performance Guarantees

Contract Year	Cabras 1	Cabras 2
1	85%	85%
2	85%	85%
3	85%	85%
4	85%	85%
5	85%	85%

These values will be used for evaluating CONTRACTOR incentives or penalties. The CONTRACTOR shall compute the EAF for each unit for each performance period. The EAF benefit or penalty shall be computed as follows:

- (1) For each unit, the incentive or penalty shall be applicable to the succeeding year's Fixed Management Fee, as follows:

$$\text{Incentive Adjustment} = (\text{Actual \%EAF} - \text{GPA Minimum \%EAF}) \times \text{Annual Management Fee}$$
$$\text{Penalty Adjustment} = (\text{Actual \% EAF} - \text{GPA Minimum \%EAF}) \times \text{Annual Management Fee}$$

***** EXAMPLE FOR ILLUSTRATION PURPOSES ONLY *****

GPA's Minimum Guarantees:

Contract Year	Cabras 1	Cabras 2
1	85%	85%

And Performance Management Fees as follows:

Contract Year	Annual Management Fee
1	\$1,000,000.00
2	\$1,100,000.00

BONUS

Cabras 2 EAF = 100% EAF

Bonus = $(100\% - 85\%) \times \$1,000,000 = \$150,000$ bonus to be added to succeeding year's Annual Management Fee; therefore Contract Year 2 AMF = \$ 1,250,000.00

PENALTY

Cabras 2 EAF = 80%

Penalty = $(80\% - 85\%) \times \$1,000,000 = -\$50,000$ penalty to be deducted to succeeding year's Annual Management Fee; therefore Contract Year 2 AMF = \$ 1,050,000.00

Section 2: EFOR Performance Measure

In addition to achieving high EAFs, GPA is contracting a CONTRACTOR to assure that Cabras Units achieve low equivalent force outage rates (EFOR). The CONTRACTOR shall track and compute the EFOR for each unit as defined by the North American Electric Reliability Council (NERC) or its successors. The EFOR computation shall be computed to two decimal places. There will be no bonus or penalty associated

with EFOR. The Authority reserves the right to extend this CONTRACTOR contract for a year-by-year extension up to five extensions if the EFOR performance measure is met.

Section 3: Heat Rate and Efficiency Performance

GPA is contracting a CONTRACTOR to assure that the Cabras #1 and #2 Units meet or perform better than current requirements for Gross Heat Rate.

As discussed in Section 7.0, GPA and the CONTRACTOR shall establish a baseline heat rate based on the actual heat rate for the twelve months prior to the contract commencement. Any consistent improvement in the Net Heat Rate Performance Baseline shall be evaluated by the CONTRACTOR, and reported to GPA. The report shall include illustration, analysis and justification of the improvements.

If the improvements are consistent and sustained through at least twelve months, or if the improvements involve significant cost savings or increase in efficiency or availability, then GPA may provide incentives to the CONTRACTOR. The incentives may be in the form of shared fuel cost savings, additional funding for O&M activities, or through other means as may be proposed by the CONTRACTOR and approved by GPA.

Any heat rate performance above 15% of the baseline, GPA may impose penalties to the CONTRACTOR equivalent to the additional fuel cost compared to theoretical heat rate if the baseline was met. For heat rate efficiency sustained continuously for 12 months (12-months running heat rate of less than 9,600 BTU/KWH) will allow GPA to consider sharing the savings in fuel cost to the CONTRACTOR.

The CONTRACTOR is also required to track each unit's gross and net efficiency performance, and include in its regular reports, actual and 12-month rolling gross and net efficiencies. Any consistent improvement in the Net Efficiency Performance shall be evaluated by the CONTRACTOR, and reported to GPA. The report shall include illustration, analysis and justification of the improvements. If the improvements are consistent and sustained through at least 12 consecutive months, or if the improvements involve significant cost savings or increase in efficiency or availability, then GPA may provide incentives to the CONTRACTOR. The incentives may be in the form of shared fuel cost savings, additional funding for O&M activities, or through other means as may be proposed by the CONTRACTOR and approved by GPA.

For Net Heat Rate, the penalty calculation shall be as follows:

- For each unit, for each contract year,
Theoretical Fuel Consumption =
$$\Sigma [15 \text{ Min. Net Output (KWH)} \times \text{HR Guarantee at Load (BTU/KWH)}] / \text{Avg. Heating Value (BTU/BBL)}$$
- For each contract year, if Total Actual Fuel Consumption for each unit is greater than Theoretical Fuel Consumption for each unit, PENALTY will be calculated as follows:
Penalty = Difference of Actual and Theoretical Fuel Consumption
$$\times (\text{Total KWH produced by both units} / \text{Total KWH produced by the plant})$$

$$\times \text{Fuel Cost}$$

Where

fuel cost = (% HSFO use x Unit Cost of HSFO) + (% LSFO use x Unit Cost of LSFO)
as reported by GPA's Plant Accounting section.

Heat Rate Performance shall be evaluated at the end of each contract year and added to the CONTRACTOR invoice as an additional line item.

Section 4: Maximum Bonus/Penalty Payment

The total of Bonus and Penalties each year shall not exceed 20% of the Annual Management Fee. (refer to Amendment III Q&A 10)

APPENDIX E: Fuel Supply Specifications & Arrangements

FUEL SUPPLY SPECIFICATIONS

The specifications for the Fuel Supply for Cabras Units will be as follows:

A. Residual Fuel Oil No. 6

Parameter	Unit of Measure	Limit	
		Minimum	Maximum
API Gravity		12.1	23
Kinematic Viscosity @ 50°C	cSt		180
Flash Point	°C	66	
Pour Point	°C		21
Micro-Carbon Residue	% by weight		10
Ash	% by weight		0.10
Water & Sediments	% by weight		1.0
Sulfur, HSFO	% by weight		2.00
Sulfur, LSFO	% by weight		1.19
Vanadium	ppm		90
Aluminum + Silicon Content	ppm		80
Gross Heating Value, HSFO	MMBTU/bbl		6.0
Gross Heating Value, LSFO	MMBTU/bbl		6.0

B. Diesel Fuel Oil No. 2

Parameter	Unit of Measure	Limit	
		Minimum	Maximum
Density @ 15 °C	Kg/m3	820	850
Kinematic Viscosity @ 40°C	cSt	1.9	4.1
Flash Point	°C	60	
Pour Point	°C		10
Cloud Point	°C		20
Ramsbottom Carbon Residue (on 10% distillation residue)	% by weight		0.20
Ash	% by weight		0.005
Water & Sediments	% by weight		0.05
Sulfur	% by weight		0.5
Gross Heating Value	MMBTU.bbl		5.7

FUEL SUPPLY ARRANGEMENTS

Delivery	GPA and PMC will liaise to prepare weekly fuel schedules showing anticipated times and quantities of fuel to be utilized by the Power Plant. GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefore, and for all arrangements with the suppliers.
Fuel Oil Storage	The existing fuel oil storage tanks at the Cabras Units shall be utilized by PMC. The water shall be drained off weekly.
Testing	PMC shall calibrate the fuel tanks in an approved manner. Upon each delivery of fuel to and, from time to time thereafter, a suitable sample will be taken and analyzed jointly by the PMC and GPA to ensure that it meets the specifications as shown above. Oil quality is sampled, tested and reported back to GPA by SGS Guam, Inc. of Redwood Petroleum Services.
Metering	Meters shall be calibrated by PMC and tested every six months under the PMC Routine O&M Spending Budget by a third party agreed between PMC and GPA.
Variation in rate Of delivery	PMC and GPA will liaise in estimating the fuel required to comply with GPA's annual, monthly and weekly systems operating plans.
Security	PMC shall be responsible for all security and safety arrangements in respect of the fuel in the Site tanks.
Spill Prevention Control and Countermeasure Plan (SPCC Plan)	<ol style="list-style-type: none">1. PMC shall be responsible for the preparation of SPCC plan for the facility for EPA and GPA's approval.2. PMC shall be responsible for the full compliance of the Facility SPCC plan.
Best Management Plan (BMP)	PMC shall be responsible for the preparation of the Facility BMP plan for EPA and GPA's approval, including full compliance with the plan.