

**ENRON**

**ENERGY CONVERSION  
AGREEMENT**

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**ENERGY CONVERSION  
AGREEMENT**

**FOR A  
DIESEL ENGINE  
GENERATOR POWER STATION  
PITI PROJECT**

*between*

**GUAM POWER AUTHORITY**

*and*

**ENRON DEVELOPMENT PITI CORP.**

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**September 30, 1996**

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This Agreement is made and entered into as of September 30, 1996 by and between:

ENRON DEVELOPMENT PITI CORP., a private corporation, duly organized and existing under the laws of the State of Delaware, which shall be licensed to do business in Guam with its registered office at 1400 Smith Street, Houston, Texas, United States of America, represented by its authorized representative, Apolonio Baca, who is duly authorized to represent it in this Agreement, hereinafter referred to as "Owner"

- and -

GUAM POWER AUTHORITY, a government owned agency with its principal office at 2nd Floor of Sunny Plaza, Tamuning, Guam, represented herein by its Acting General Manager, Ricardo S. Unpingco who is duly authorized to represent it in this Agreement, hereinafter referred to as "GPA";

#### RECITALS

WHEREAS, GPA has an urgent need for additional power plant capacity to meet its power supply deficiencies; and

WHEREAS, the Governor of Guam called an emergency special session of the Guam Legislature on June 22, 1996, to address the ongoing emergency and urgent need to ensure the adequacy and reliability of Guam's electrical power generation system, and the shortage of electrical power generation capacity; and

WHEREAS, the Guam legislature enacted, and the Governor of Guam approved Public Law 23-103, which is an act to provide for emergency procurement for the island's power generation; and

WHEREAS, Public Law 23-103 authorized GPA to procure power generation, substation and transmission services upon a declaration of emergency approved by the Governor under executive order; and

WHEREAS, Executive Order No. 96-23 declared the existence of emergency conditions in Guam with regard to the adequacy and reliability of the electrical power generation system and authorized GPA to procure power generation, substation and transmission services, pursuant to Public Law No. 23-103; and

WHEREAS, GPA issued a request for proposal for, among other things, the construction, operation and maintenance of baseload power plant in accordance with the emergency procurement requirements of 5 G.C.A. § 5215; and

WHEREAS, Enron Development Management, Ltd. submitted a statement of qualifications, an interest in providing such service, and a proposal for the construction, operation and maintenance of the requested baseload power plant; and

WHEREAS, GPA upon evaluation of the submitted proposals, determined that Owner is the best qualified to provide certain of the services set forth in the request for proposals, and the negotiations of compensation have been determined to be fair and reasonable; and

WHEREAS, GPA has agreed to supply fuel to the Power Station upon the terms and subject to the conditions hereinafter appearing; and

WHEREAS, Owner has agreed to supply and GPA has agreed to accept a diesel engine generator power station on a build, operate and transfer basis upon the terms and subject to the conditions hereinafter appearing.

NOW THEREFORE in view of the foregoing premises and in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. **Definition of Terms**

1.1 In this Agreement and in the recitals hereto:

"Adjusted Actual Heat Rate" shall have the meaning given to it in the Eighth Schedule;

"Affiliate" means with respect to any entity, another entity controlled by, controlling, or under common control with, such entity including, with respect to Owner, Enron Global Power & Pipelines L.L.C., a Delaware corporation;

"Availability Factor" shall have the meaning given to it in the Eighth schedule;

"Availability Schedule" means the schedule of the generating capacity of the Power Station declared available pursuant to the Sixth Schedule;

"Black Start" means the starting of the Power Station in circumstances where, due to failure of other power stations connected to the GPA grid, it is impossible for GPA to supply the necessary start-up electricity;

"Capacity" means the tested net output, expressed in kW, that the Power Station is capable of generating at the test conditions set forth in Section 3 of the Fourteenth Schedule as measured pursuant to the Seventh Schedule;

"Capacity Fees" means the fees payable by GPA to Owner in respect of the Contracted Capacity as provided in Clause 11 as such fees are further defined in the Eighth Schedule;

"Completion Date" means the day upon which Owner certifies that the Power Station, capable of operating in accordance with the Operating Parameters, has successfully completed its testing;

"Contract Year" means each consecutive one (1) year period of 365 days (or 366 days if the one year period includes February 29), the first Contract Year to commence on the Completion Date and to terminate on the first anniversary of the Completion Date, each subsequent Contract Year to commence on the day following the expiration of the previous Contract Year and the last Contract Year to expire at the end of the Co-operation Period;

"Contracted Capacity" means, during the first Contract Year after the Completion Date, the Capacity demonstrated by Owner in the initial performance tests performed pursuant to the Fourteenth Schedule, and, in each Contract Year thereafter during the Co-operation Period, the Power Station's capacity as nominated and demonstrated by Owner at the beginning of each such Contract Year;

"Contractual Net Heat Rate" shall have the meaning given to it in the Eighth Schedule;

"Co-operation Period" means the period of twenty (20) years from the later of the Target Completion Date and the Completion Date, as the same may be extended from time to time pursuant to the terms hereof;

"Delivery Point" means the metering location referred to in the Seventh Schedule;

"Downtime" shall have the meaning given to it in the Sixth Schedule;

"Effective Date" means the date on which GPA and Owner certify that all the conditions contained in Clauses 7.1, 7.2 and 7.3, which in the case of Clause 7.1 condition GPA's continuing obligations under this Agreement and in the case of Clauses 7.2 and 7.3 condition the continuing obligations of Owner under this Agreement, have been fulfilled or waived to the satisfaction of GPA in the case of Clause 7.1 and fulfilled or waived to the satisfaction of Owner in the case of Clauses 7.2 and 7.3;

"Emergency" means unforeseen circumstances affecting the GPA grid which reasonably require GPA to request Owner to supply it with power and energy as soon as practicable in order to avoid damage to GPA's electric system and/or a failure in the continuous supply of electricity from the grid;



"Fixed O&M Fees" means the fees payable to Owner for the portion of operating expenses that are fixed (subject to adjustment for inflation pursuant to the Eighth Schedule) in accordance with Clause 11 as such fees are further defined in the Eighth Schedule;

"Force Majeure" shall have the meaning specified in Clause 16.1;

"Forced Outage" shall have the meaning given to it in the Sixth Schedule;

"Fuel Management Agreement" means the agreement to be entered into pursuant to Clause 9.6;

"Fuel Specifications" means the specifications as to the quality and method of storage, supply and delivery of the fuel for the Power Station described in Clause 9.3 and the Fourth Schedule;

"Fuel Supply Procedures" means the procedures and parameters for the supply and delivery of fuel by GPA described in Clause 9 and the Fourth Schedule;

"Governmental Instrumentality" shall have the meaning specified in Clause 18;

"Guarantee Tests" shall have the meaning given to it in the Fourteenth Schedule;

"IRS Rate" means the interest rate, compounded daily, set by the United States Internal Revenue Service for overdue income taxes, as the same may be amended from time to time;

"Letter of Credit" means an irrevocable standby letter of credit provided to Owner by GPA as provided in Clause 11.7 in the form set forth in the Twelfth Schedule;

"Major Overhaul" means, in relation to the diesel engines, each overhaul following 45,000 Operating Hours;

"Milestone Schedule" means the schedule of milestone dates for development, permitting, construction, testing and completion of the Power Station set forth in the Third Schedule;

"Month" means the period commencing immediately after the printing of the monthly report recording the then current readings of the electricity meters at 12:00 noon local time on the 25th of each calendar month, in accordance with the procedures set forth in the Seventh Schedule and ending upon the generation of such report on the 25th of the next calendar month; in the case of the first month "Month" means the period commencing on the first day of the Cooperation Period and ending upon the generation of a report of the then current readings of the electricity meters at 12:00 noon

local time on the 25th of the current calendar month (or the next calendar month if the period commenced on or after the 25th of the current calendar month) and in the case of the last month "Month" means the period commencing immediately after the end of the immediately preceding Month and ending upon the generation of a report of the then current readings of the electricity meters at 12:00 noon local time on the Transfer Date;

"Navy Lease" means the Lease Agreement dated as of September 15, 1996 between the Department of the Navy and GPA and designated as Navy Identification No. N6274296RP00101;

"Net Heat Rate" shall have the meaning given to it in the Eighth Schedule;

"Nominal Capacity" means 79,600 kW;

"NPDES Permit" means a permit issued to Owner for the Project, based on the Specifications, by the U.S. Environmental Protection Agency, or the relevant State or Territorial agency, allowing discharge from the Project into waters of the United States of America (including without limitation the Territory of Guam);

"Operating Hours" means, in respect of the Power Station or any engine thereof, any hour, or part thereof, during which the Power Station or any such engine is dispatched and exporting electricity;

"Operating Parameters" means the operating parameters of the Power Station described in the Second Schedule;

"Performance Security" means the performance bond or guarantee of a financial institution or similar security reasonably acceptable to GPA in the amount of \$30 dollars/kW of the Nominal Capacity to be delivered by Owner to GPA in respect of Owner's obligations under Clause 5.4;

"Power Station" means the oil fired electric generating facility to be constructed at the Site pursuant to Clause 2.1 as further described in the First Schedule;

"Project" means the design, construction, equipping, completion, testing, commissioning, operation and maintenance of the Power Station;

"Project Scope" means the scope of the supply of work of Owner in connection with the Power Station as described in the First Schedule;

"PSD Permit" means a permit issued to Owner for the Project, based on the Specifications, by the U.S. Environmental Protection Agency, or the relevant State or Territorial agency, allowing emissions from the Project to the atmosphere;

"Scheduled Outage" shall have the meaning given to it in the Sixth Schedule;

"Site" means the site for the Power Station as more particularly described in the First Schedule;

"Specifications" means the specifications of the Power Station described in the First Schedule;

"Start Up Charges" shall have the meaning given to it in the Eighth Schedule;

"Sublease" means the lease to be entered into between Owner and GPA for sublease of the Site as provided in Clause 2.14;

"Target Completion Date" means December 31, 1998, as such date may be extended in accordance with the terms and conditions of this Agreement;

"Transfer Date" means the day following the last day of the Co-operation Period, unless sooner terminated;

"Transmission Line" means the 115 kV voltage transmission line(s), transmission towers, substations and other items necessary to transmit electricity from the outgoing gantry of the switching facility within the Site boundary to GPA's electrical system as further described and having the specifications set out in the Fifth Schedule to be installed and connected by GPA pursuant to Clause 3.6; and

"Variable O&M Fees" means the payment for the portion of operating expenses that are variable (subject to adjustment for inflation pursuant to the Eighth Schedule) in accordance with Clause 11 as such fees are further defined in the Eighth Schedule.

1.2 Any reference in this Agreement to a "Clause" or a "Schedule" is a reference to a clause hereof or a schedule hereto. Any reference to a Section is a reference to a Section in the relevant Schedule.

1.3 In this Agreement:

(i) "\$" and "dollar(s)" denote lawful currency of the United States of America;

(ii) "MW" denotes a megawatt;

(iii) "kW" denotes a kilowatt; and

(iv) "kWh" denotes a kilowatt hour.

2. The Project

- 2.1 Owner shall cause the design, development, construction, completion, testing and commissioning at the Site of a diesel engine power station with Black Start capability, capable of operating at a level within the Operating Parameters and in accordance with the Specifications, the Project Scope and the other terms and conditions of this Agreement.
- 2.2 Subject as herein provided, all costs of Owner in connection with the building of the Power Station as provided in Clause 2.1 shall be borne by Owner and Owner shall be responsible for arranging all necessary funding including any available preferential credits.
- 2.3 GPA shall ensure that all necessary utilities as provided in Section V of the First Schedule are made available at the Site as necessary for the construction, testing and commissioning of the Power Station.
- 2.4 GPA shall assist Owner on a best efforts basis in obtaining all governmental approvals for the importation and transportation of equipment to the Site, and for obtaining of building, construction, operating and other permits, licenses and approvals for the Project, and of visas and work permits for foreign personnel, the recruitment of local labor and compliance with all local and other regulations.
- 2.5 Without limiting the generality of Clause 2.4, GPA and the Government of Guam shall join with Owner to apply for all environmental and all local permits, licenses and approvals required for the ownership, construction and operation of the Power Station including without limitation joining Owner in applications to Region IX of the United States Environmental Protection Agency to obtain the PSD Permit and NPDES Permit (based in each case on the Specifications of the Power Station) to allow commencement of the construction phase of the Project as soon as possible.
- 2.6 GPA shall supply fuel and start-up electricity of the quantity and quality required under this Agreement and at the time required under this Agreement for the construction, testing and commissioning of the Power Station, shall construct, install and connect the Transmission Line as required under Clause 3.6 and the Fifth Schedule and shall take all electricity generated during testing and commissioning of the Power Station.
- 2.7 All costs of GPA in connection with its obligations under Clauses 2.3, 2.4 and 2.5 shall be borne by GPA except for construction and start-up electricity, with respect to which Owner shall pay GPA on the basis of the standard tariff applicable to GPA's industrial customers without extended term demand charges.

- 2.8 From the date hereof until the Transfer Date, Owner shall, directly or indirectly, own the Power Station and all the fixtures, fittings, machinery and equipment on the Site or used in connection with the Power Station which have been supplied by it or at its cost and it shall operate and manage the Power Station for the purpose of converting fuel of GPA into electricity.
- 2.9 Until the Transfer Date, GPA shall, at its own cost, supply and deliver all fuel required by the Power Station and shall take and pay for in accordance with Clause 11 all electricity generated by the Power Station.
- 2.10 During the Co-operation Period GPA shall ensure the provision of utilities to the Power Station as provided in the First and Fourth Schedules provided that, subject to the terms and conditions of this Agreement, GPA shall have no liability under this Clause where such utility is withdrawn as a result of Owner failing to pay normal market rates for the utilization of the same.
- 2.11 In accordance with Clause 14.1, on the Transfer Date the Power Station shall be transferred by Owner to GPA without the payment of any compensation to Owner.
- 2.12 The parties hereto shall mutually collaborate with each other in order to achieve the objectives of this Agreement and the performance by each of the parties hereto of their respective obligations hereunder. GPA covenants to and agrees with Owner that it will provide its full and timely cooperation in connection with Owner's efforts to finance the Power Station on a non-recourse, project finance basis including without limitation, responding to all reasonable requests for information on and certification of GPA's authority and the status of this Agreement; provided, however that GPA shall have no obligation to cooperate to the extent that GPA or its interest in the Project would be materially adversely affected, including without limitation any material financial detriment.
- 2.13 Owner shall provide to GPA the Performance Security within sixty (60) days following execution by the parties of this Agreement. GPA shall return to Owner, concurrently with the delivery by Owner of the Performance Security to GPA, the bid bond provided to GPA by Enron Development Management, Ltd. in connection with the proposal for the Project.
- 2.14 Upon execution of this Agreement, GPA shall provide to Owner access to and use of the Site as necessary for the development of the Project at no cost to Owner including without limitation the taking of soil samples, site surveys and any other environmental assessments deemed necessary by Owner. Each of the parties acknowledges that the Site (together with certain other property) is leased to GPA by the Department of the Navy pursuant to the Navy Lease. Subject to the prior written consent of the Department of the Navy as lessor of the Site pursuant to the Navy Lease, GPA shall within sixty (60) days of execution of this Agreement enter into a Sublease with

Owner for lease of the Site to Owner, which Sublease shall provide for (a) a term at least as long as the term of this Agreement, as it may be extended, (b) an annual rent of \$100 dollars, (c) an environmental indemnity from GPA to Owner with respect to any pre-existing hazardous materials at the Site in existence as of the date of the effectiveness of the Sublease, (d) Owner to comply with such terms and conditions of the Navy Lease as are incorporated into the Sublease, and (e) such other terms and conditions as may be necessary for Owner to secure non-recourse financing for the Project, such other terms to be mutually agreed between Owner and GPA.

- 2.15 Due to the importance of the Project and in order to implement the Project in an expeditious manner, each party agrees to appoint a representative who will have designated authority to act under this Agreement and shall represent the interests of such party in the administration of this Agreement. Each such representative shall be appointed within thirty (30) days of the execution of this Agreement by notice to the other party, which notice shall set forth the authorization of such representative to act. Each party may substitute a representative previously appointed upon prior notice to the other party.

3. Construction of the Power Station

- 3.1 Owner shall be responsible for the design, construction, equipping, completion, testing, commissioning and financing of the Power Station and shall commence this work in accordance with the Milestone Schedule.

- 3.2 In pursuance of its obligations under Clause 3.1 Owner shall have the full right at its sole discretion, among other things, to:

(i) call for tenders and award contracts with or without tender;

(ii) arrange for the preparation of detailed designs and approve or reject the same;

(iii) appoint and remove consultants and professional advisers;

(iv) purchase new and/or refurbished equipment including the diesel engines;

(v) appoint, organize and direct staff, manage and supervise the Project;

(vi) enter into contracts for the supply of materials and services, including contracts with GPA; and

(vii) do all other things necessary or desirable for the completion of the Power Station in accordance with the Specifications and generally accepted engineering standards.

3.3 In pursuance of its obligations under Clause 3.1 Owner shall, where reasonably possible, award contracts to Guam contractors and suppliers of materials and services provided that, in Owner's sole opinion, (i) the quality, delivery time, costs, reliability and other terms are comparable to those offered by foreign contractors and/or suppliers and (ii) the use of local contractors and/or suppliers will not cause a delay in Owner's performance of its obligations under this Agreement.

3.4 GPA shall be entitled at its own cost to observe and review the progress and quality of the construction and installation work and for this purpose Owner shall:

(i) ensure that GPA and any experts appointed by GPA in connection with the Project are afforded reasonable access to the Site at times to be agreed with Owner provided that such access does not materially interfere with the work comprising the Project or expose any person or property on the Site to any danger or damage;

(ii) make available for inspection at the Site at times to be agreed with Owner copies of all plans and designs; and

(iii) within six (6) months of the Completion Date of the Power Station, supply GPA with one set of reproducible copies and five sets of white print copies (or equivalent) of all as-built engineering plans and designs.

3.5 Owner:

(i) shall in no way represent to any third party that, as a result of any review by GPA, GPA is responsible for the engineering soundness of the Power Station; and

(ii) shall, subject to the other provisions of this Agreement, be solely responsible, during the Co-operation Period only, for the economic and technical feasibility, operational capability and reliability of the Power Station.

3.6 GPA shall ensure that all infrastructure requirements and utilities necessary for the completion, operation and maintenance of the Power Station are provided in accor-

dance with the Specifications by the dates indicated in the Milestone Schedule and accordingly shall at its own cost, inter alia:

(i) ensure that there is provided to the Site water, electricity (without extended term demand charges) and telephone as provided and at the times set out in Milestone Schedule, the cost of the utilization of which and normal fees shall be for Owner's account; and

(ii) ensure that there is installed and connected, but not later than six (6) months prior to the Target Completion Date, the Transmission Line and relay protection equipment necessary to connect the Power Station to GPA's electrical power grid and which is capable of operating within the specifications set out in the Fifth Schedule.

3.7 GPA shall, within one hundred twenty (120) days of execution of this Agreement, enter into an agreement with a contractor designated by Owner, for the demolition and removal of existing equipment, piping, supports, conduit, electrical systems, etc. of units 1, 2 and 3 at the Piti power plant as further described in Section III, 2.9 of the First Schedule, on terms and conditions to be agreed between Owner, or such contractor and GPA (the "Demolition Contract"), which shall include without limitation (a) GPA undertaking to obtain all consents, approvals, licenses, registrations and exemptions necessary to perform the work (other than approvals required by Owner or such contractor to do business as a contractor in Guam), and (b) an environmental indemnity from GPA to Owner (and/or such contractor) with respect to any pre-existing hazardous materials in existence as of the date of commencement of the work. Owner shall, at the same time, enter into an agreement for the reimbursement to GPA of all payments made for the completion of the work under the Demolition Contract subject to Owner's approval of any scope changes to such work. It is agreed by the parties, that execution of such Demolition Contract and the aforementioned reimbursement agreement shall be in full satisfaction of Owner's obligation under this Agreement to perform, or cause to be performed, the work referenced in Section III, 2.9 of the First Schedule.

3.8 Owner shall consult with GPA with respect to the use of any employee, representative or agent of Owner (including without limitation Owner's representative provided for in Clause 2.15 and steering committee member(s) provided for in Clause 8.6) responsible for representing Owner in connection with the Project before GPA. GPA shall have the right to approve each such employee, representative or agent, which right shall be reasonably exercised within fourteen (14) days' notice thereof. The failure of GPA to respond to Owner's notice with respect to the use of any employee, representative or agent shall be deemed to be an approval by GPA of such employee, representative or agent.



4. Specifications and Operating Parameters

- 4.1 The Power Station shall be constructed and equipped in accordance with the Specifications and Project Scope set out in the First Schedule.
- 4.2 Following the Completion Date the Power Station shall be capable of operating within the Operating Parameters set out in the Second Schedule.

5. Construction Timetable

- 5.1 The parties shall work together in order to endeavor to achieve the timely completion of the Project in accordance with the following timetable:

<u>Milestone</u>	<u>Date</u>
Effective Date	June 1, 1997
Mobilization Date	July 1, 1997
Target Completion Date	December 31, 1998

- 5.2 In the event that the Effective Date occurs after June 1, 1997, each of the other dates set out in Clause 5.1 and the Milestone Schedule shall be adjusted to occur later by the number of days that the Effective Date is delayed and if such delay extends beyond December 1, 1997 the Capacity Fees shall be adjusted pursuant to Section 4.1 of the Eighth Schedule.
- 5.3 In the event that, due to the fault of Owner, Owner fails to complete the Power Station as provided in Clause 5.1 on the Target Completion Date, as such date may be extended in accordance with the provisions of this Agreement, Owner shall pay GPA for each day thereafter until the Completion Date a delay penalty of \$5,000 dollars for each day that the Completion Date is delayed, provided that in any event the cumulative total of the penalty shall not exceed \$1,350,000; provided, further no penalty shall be due to GPA if GPA is unable to receive electrical energy due to the existence of any of the conditions specified in sub-paragraphs (i), (ii) or (iii) of Clause 11.9 and the Target Completion Date shall be extended for each day that GPA is unable to receive electricity due to such conditions.
- 5.4 In the event that, due to the fault of Owner, the Completion Date has not occurred on or before the day falling two hundred seventy (270) days after the Target Completion Date, as such date may be extended pursuant hereto, and, in the reasonable judgment of GPA it does not appear reasonably likely that the Completion Date will ever occur, GPA shall be entitled to demand payment under the Performance Security as liquidated damages, in addition to the delay penalty payments due pursuant to Clause 5.3, but Owner shall have no other liability in respect of such failure to complete the

Power Station and upon such sum becoming payable, or being paid by Owner prior to it becoming due, Owner shall have no further liability to make any payments of whatever nature hereunder, the Power Station shall be transferred to GPA pursuant to Clause 17.1 for the purchase price set forth in Clause 17.7 applicable prior to the Completion Date and thereafter this Agreement shall be null, void and of no force and effect.

5.5 Upon substantial completion of the Power Station, Owner shall certify that the Power Station has successfully completed its testing and that accordingly the Completion Date has occurred notwithstanding that the Power Station is unable to produce 79.6 MW provided that the minimum Capacity of 39 MW is met.

6. **Testing**

6.1 The parties shall meet and agree to the procedures, standards, protective settings and a program for the Guarantee Tests and other completion tests and the Annual Performance Tests of the Power Station in accordance with the Fourteenth Schedule. GPA undertakes to (i) take at no cost to GPA all electricity generated during any Guarantee Tests and other completion tests and (ii) take and pay for all electricity generated during the Annual Performance Tests in accordance with Clause 11.1.

6.2 Owner shall give to GPA not less than fourteen (14) days' notice, or such lesser period as the parties hereto may agree, of its intention to commence any testing. In any event, Owner shall be obligated to inform GPA immediately upon learning of any difficulty in obtaining any permit or other government approval required for testing and commercial operation of the Power Station.

6.3 GPA shall ensure that there is made available for any testing supplies of fuel, start up electricity and water in sufficient quantity for the proper carrying out of such testing and of the quality specified in the Fourth Schedule.

6.4 All costs related to the fuel to be supplied by GPA pursuant to Clause 6.3 shall be for GPA's account.

6.5 GPA and/or its experts shall be entitled to be present at any testing; provided, that GPA's failure to provide such representatives shall not delay or in any way invalidate any test.

6.6 Upon the completion of any test required or permitted hereunder, the Owner shall produce a report summarizing the test and stating the results thereof. The Owner and GPA shall agree to the form of such report within eighteen (18) months of the execution of this Agreement. The report shall be submitted to GPA within five (5) days of completion of the relevant test and GPA shall approve same within five (5) days of submission or provide documented evidence of any material errors in the

report. The failure of GPA to respond to Owner's test report within such five (5) day period shall be deemed to be an approval by GPA of the relevant test. The parties shall confer and agree on the final report within a further three (3) days. Failure to agree on the results of the test or the report shall be resolved pursuant to the provisions of Clause 22 or at Owner's option the applicable test may be repeated and the results resubmitted to GPA for approval in accordance with the provisions of this Clause 6.6. Upon GPA's approval of the test report, retest report or the parties resolving any disputed sections of the relevant report, Owner will certify the results of such test and the Contracted Capacity and/or the Adjusted Actual Heat Rate shall be established for the subsequent Contract Year.

**7. Conditions Precedent**

7.1 Except for the obligations set forth in Clauses 2.4, 2.5, 2.14, 2.15 and 7.4, it shall be a condition precedent to the continuing obligations of GPA under this Agreement that by December 1, 1996 or such later date as the parties hereto may agree, the following are supplied to GPA by Owner, each in form and substance satisfactory to GPA or that such condition precedent is waived by GPA:

(i) copies of the Certificate of Incorporation and Bylaws of Owner and Owner's Foreign Corporation License and Certificate of Registration, as certified by the company secretary of Owner in a manner satisfactory to GPA;

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

(iii) the Performance Security; and

(iv) a legal opinion of Owner's counsel regarding the enforceability of this Agreement against Owner, in form and substance satisfactory to GPA.

7.2 Except for Owner's obligations under Clause 2.5, 2.13 and 2.15, it shall be a condition precedent to the continuing obligations of Owner under this Agreement that by December 1, 1996, or such later date as the parties hereto may agree, the following are supplied to Owner by GPA, each in form and substance satisfactory to Owner or that such condition precedent is waived by Owner:

(i) copies of each law, regulation, decree, or other governmental action authorizing the execution, delivery and performance by

GPA of this Agreement, each certified by an authorized officer in a manner satisfactory to Owner; -

(ii) copies of such consents, licenses, permits, approvals and registrations by or with any governmental agency or other authority in Guam as may be necessary to ensure the validity and binding effect of this Agreement and to permit the performance by GPA of its obligations under this Agreement;

(iii) a certificate of an authorized officer of GPA confirming that all necessary approvals and action have been duly obtained and taken for the execution, delivery and performance by GPA of this Agreement;

(iv) a legal opinion of GPA's General Counsel in the form set out in the Thirteenth Schedule;

(v) a Site lease executed by a duly authorized officer of GPA containing terms and conditions consistent with Clause 2.14 and such other terms and conditions reasonably satisfactory to Owner; and

(vi) a legal opinion of the Attorney General of the Territory of Guam as to the validity, enforceability and binding effect of this Agreement in form and substance satisfactory to Owner.

7.3 Except for Owner's obligations under Clause 2.5, 2.13 and 2.15, it shall be a condition precedent to the continuing obligations of Owner under this Agreement that by June 1, 1997, or such later date as the parties hereto may agree the permits, approvals, opinions and documents referred to in the Ninth Schedule are received by Owner in form and substance satisfactory to Owner or that such condition precedent is waived by Owner.

Any delay in meeting the target dates in the Milestone Schedule caused by Owner's inability to obtain permits, licenses and approvals from any city, municipality, province and county, including without limitation the United States Environmental Protection Agency or the inability to obtain fuel, water, construction and start up electricity or any other utilities to the Site, shall be a Force Majeure within the meaning of Clause 16.1(b) resulting in a day for day delay in the Target Completion Date of the Power Station and as a result of such delay, Owner will not be subject to delay penalties. If such inability is due solely and directly to Owner's bad faith, failure to diligently prosecute or failure to pay reasonable fees, then the penalties for delay shall apply as provided in this Agreement and no Force Majeure relief will be granted.

7.4 If, on or before June 1, 1997, or such later date as the parties hereto may agree, the Effective Date has not occurred, GPA shall reimburse and indemnify Owner for all

costs and liabilities actually incurred by Owner in respect of its obligations under Clause 3 pursuant to a development budget approved by GPA in accordance with the provisions of this Clause 7.4, unless the Effective Date has not occurred due solely and directly to Owner's bad faith, failure to diligently prosecute development of the Project in accordance with this Agreement or failure to pay reasonable fees. Within thirty (30) days of execution of this Agreement, Owner shall submit a development budget for the Project to GPA for its approval, which in any event shall not exceed \$4,500,000 dollars. Within thirty (30) days of Owner's submittal to GPA of Owner's development budget, GPA shall approve such development budget acting reasonably. In the event GPA fails to approve Owner's development budget or fails to raise any objections with respect thereto within thirty (30) days of its submittal to GPA, such development budget shall be deemed to be approved by GPA. GPA's obligations under this Clause 7.4 shall be effective notwithstanding that the Effective Date has not occurred or that all or any of the conditions precedent set out in Clauses 7.2 and 7.3 have not been satisfied or waived. GPA may, upon reasonable notice to Owner, conduct an audit with respect to any indemnity claimed by Owner pursuant to this Clause 7.4 for the purpose of determining if the amount of Owner's claim for reimbursement has been computed in accordance with the provisions of this Agreement.

7.5 [Reserved]

7.6 If all the conditions set forth in Clause 7.1 which condition the continuing obligations of GPA, and Clauses 7.2 and 7.3 which condition the continuing obligations of Owner, have been satisfied, then GPA and Owner shall meet and jointly certify that each of their respective obligations under this Agreement are no longer subject to the conditions set forth in Clauses 7.1, 7.2 and 7.3 and that the Effective Date has occurred.

7.7 If all the conditions set forth in Clauses 7.1, 7.2 and 7.3 hereof have not been satisfied as of June 1, 1997, the parties hereto shall meet and endeavor to agree on a new effective date; if no agreement is reached on or before July 1, 1997, then (i) this Agreement shall, subject to Clause 7.4, be declared automatically canceled (except as required in respect of Clause 7.4), (ii) the Performance Security shall immediately be returned by GPA to Owner and (iii) the parties shall have no liability with respect to each other except as provided in Clause 7.4.

7.8 Without prejudice to Clause 7.7, if by December 15, 1996, despite the reasonable best efforts of the parties to obtain the PSD Permit for the Site based on the Specifications and Project Scope and/or to enter into the Sublease, it does not appear that the PSD Permit will be issued or that the Sublease will be entered into within a reasonable time frame considering the Milestone Schedule, the parties shall meet and discuss modifications to this Agreement including without limitation applying for a PSD Permit waiver to commence construction and/or relocation of the Project to a site in respect of which the parties believe a PSD Permit and other permits required for the Project can be

obtained within a reasonable time frame and on a reasonable basis or such other modifications as may address the site issue. If modifications are to be made to this Agreement with respect to the foregoing, the parties agree to negotiate in good faith such modifications, including any scope changes and compensation required in connection therewith and the location of a new site and any reduction in costs that may apply with respect to such site.

8. Operation of the Power Station

8.1 Owner shall, at its own cost, be responsible for the management, operation, maintenance and repair of the Power Station during the Co-operation Period. Owner shall also be responsible for the safety and security of the Power Station.

8.2 Without limiting the generality of Clause 8.1, it is understood and agreed by GPA that Owner shall be entitled to periods of Downtime as provided in the Sixth Schedule. By not later than the Completion Date and each anniversary thereof, the parties hereto shall agree on an annual schedule for Scheduled Outages in order for Owner to undertake necessary overhaul, maintenance, inspection and repair during the course of the succeeding year, provided that such annual schedule may be revised from time to time by either party upon one (1) week's prior notice to the other and subject to approval of such revision by the party receiving such notice, which approval shall not be unreasonably withheld or delayed, as further provided in the Sixth Schedule.

8.3 Owner undertakes that during the Co-operation Period, subject to the supply of the necessary fuel pursuant to Clause 9 and to the other provisions hereof, it will operate the Power Station to convert such fuel into electricity in accordance with Clause 10.

8.4 In pursuance of its obligations under Clause 8.1 Owner shall have the full right at its sole discretion, among other things, to:

(i) enter into contracts for the supply of materials and services, including, contracts with GPA;

(ii) appoint and remove consultants and professional advisors;

(iii) purchase replacement equipment;

(iv) appoint, organize and direct staff, manage and supervise the Power Station;

(v) establish and maintain regular inspection, maintenance and overhaul procedures; and

(vi) do all other things necessary or desirable for the running of the Power Station within the Operating Parameters.

- 8.5 GPA, at its cost, will be responsible to maintain and repair the Transmission Line to ensure that at all times it is capable of operating within the specifications set out in the Fifth Schedule. GPA shall be responsible for the safety and security of the Transmission Line.
- 8.6 GPA and Owner 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 the Power Station within the Operating Parameters and following such agreement of the members of the steering committee, Owner shall operate the Power Station within such guidelines.
- 8.7 Subject to Clause 18, Owner shall operate the Power Station in accordance with all environmental and other Guam and local laws and regulations in force as at the date of this Agreement and shall comply with any changes in such laws and regulations and with any new laws and regulations.
- 8.8 An annual availability schedule will be determined by reference to Scheduled Outages and other outages calculated as provided in Clause 8 and the Sixth Schedule and the parties will agree on such annual availability schedule which shall be reviewed from time to time; in agreeing to such annual availability schedule Owner shall take into account the requirements of GPA but in no event shall Owner be obliged to agree to an annual availability schedule in excess of, or at times other than, that permitted after taking account of Scheduled Outages.
- 8.9 During the Co-operation Period, if GPA desires (i) to make use of the Site for any purpose in addition to Owner's use of the Site for the Power Station or (ii) that Owner make a modification to the Power Station, GPA shall consult with Owner about any such proposed change. If, after consulting with Owner, GPA desires to proceed with such change, GPA shall proceed under Clause 34 with respect to the desired change.
- 8.10 In pursuance of its need to employ operating personnel to fulfill Owner's obligations under this Agreement, Owner agrees, where reasonably possible, to consider for such operating needs former GPA personnel who are available at the times needed by Owner and have the requisite qualifications for the required positions. Owner shall provide such former GPA personnel a first right to interview for the relevant positions.
9. **Supply of Fuel and Start Up Electricity**
- 9.1 Throughout the Co-operation Period, GPA shall at all times supply and deliver all fuel and (except in the case of a Black Start) start up electricity required by Owner and

necessary for the Power Station to generate the electricity required to be produced by it pursuant to Clause 10.

- 9.2 The cost of the fuel to be supplied by GPA pursuant to Clause 9.1 shall be for GPA's account.
- 9.3 All fuel and start up electricity to be supplied by GPA shall be of the quality and supplied and delivered in the manner described in the Fourth Schedule.
- 9.4 All fuel shall be tested as provided in the Fourth Schedule, and Owner shall, at all times, be entitled to reject any fuel if the results of any test relating to it show that it does not comply with the Fuel Specifications.
- 9.5 GPA shall ensure that at all times the necessary stocks of fuel as required by Owner are stored at or adjacent to the Site or are available for immediate delivery to the Site.
- 9.6 GPA and Owner will enter into a Fuel Management Agreement as further described in the Fourth Schedule pursuant to which Owner will agree to manage, and shall have responsibility for security in respect of the fuel of GPA which has been delivered to the on Site fuel tanks upon the terms and conditions therein appearing and subject to the payment by GPA of the fees therein provided.

#### 10. Supply of Electricity

- 10.1 Subject to GPA supplying the necessary fuel and start up electricity pursuant to Clause 9, Owner agrees to convert such fuel into electricity and GPA agrees to take and pay for in accordance with Clause 11 all electricity requested by GPA in accordance with the procedures set out in the Sixth Schedule and the Operating Parameters set out in the Second Schedule.
- 10.2 The quantities of electricity delivered to GPA by Owner from time to time shall be monitored, measured and recorded in accordance with the provisions of the Seventh Schedule.
- 10.3 Owner shall notify GPA promptly of the occurrence of any event (other than Scheduled Outages) which results or may result in the Power Station being unable to operate in accordance with the Specifications and within the Operating Parameters.
- 10.4 The place for delivery of the electricity shall be the Delivery Point.
- 10.5 Owner shall not have the right to sell electricity available from the Power Station to any third parties without the consent of GPA.



11. Fees
- 11.1 In respect of each Month Owner will deliver to GPA an invoice in respect of Capacity Fees, Fixed O&M Fees, Variable O&M Fees, Start Up Charges and heat rate penalties or bonuses (if any) for such Month calculated as provided in the Eighth Schedule and GPA shall pay to Owner the amount of such invoice within thirty (30) days after the delivery of such invoice.
- 11.2 All fees payable to Owner pursuant to this Clause 11 shall be paid together with all gross receipts, use and value added tax thereon (which shall be separately stated in all invoices) in dollars and each sum payable shall be increased so as to ensure that after GPA has deducted therefrom any and all taxes or charges required to be deducted therefrom by GPA there remains a sum equal to the amount that would have been payable to Owner had there been no requirement to deduct or withhold such taxes or other charges. In addition, GPA shall be responsible for the payment of (a) all taxes, import duties, fees, charges and other levies imposed by the government of the United States of America or the Territory of Guam or any agency or instrumentality thereof to which Owner may at any time be or become subject in or in relation to the performance of its obligations under this Agreement other than (i) taxes imposed or calculated on the basis of the net income of Owner and (ii) reasonable construction permit fees, environmental permit fees and other similar fees and charges; and (b) all real estate taxes and assessments, rates and other charges in respect of the Site, the buildings and improvements thereon and the Power Station.
- 11.3 GPA shall pay to Owner Fixed O&M Fees and Variable O&M Fees calculated as provided in the Eighth Schedule in respect of each month or portion thereof on a pro rata basis, if any, from the Completion Date until the Target Completion Date.
- 11.4 GPA shall pay Owner Capacity Fees calculated as provided in the Eighth Schedule in respect of each month or portion thereof on a pro rata basis, if any, from the Completion Date until the Target Completion Date. GPA shall pay Owner discounted electricity fees calculated as provided in the Eighth Schedule in respect of the period prior to the Completion Date.
- 11.5 In respect of each month, Owner will deliver to GPA an invoice in respect of Capacity Fees, Fixed O&M Fees, Variable O&M Fees and discounted electricity fees payable pursuant to the foregoing Clauses 11.3 and 11.4 for such month and GPA shall pay to Owner, the amount of such invoice within thirty (30) days after the delivery of such invoice.
- 11.6 If any amount payable by GPA hereunder whether in respect of fees or otherwise is not paid on or before the due date GPA shall pay interest thereon, calculated at the IRS Rate plus 3% per annum, from the date upon which it was due until the date upon which such amount is received by Owner.

11.7 Owner shall not be entitled to a Letter of Credit for so long as GPA's debt is rated by Standard & Poor's at investment grade, however if, and for so long as, GPA's debt is rated by Standard & Poor's below investment grade then GPA covenants and agrees to provide to Owner, upon one hundred twenty (120) days' prior written notice, a Letter of Credit in an amount equal to the sum of the Capacity Fees, Fixed O&M Fees and Variable O&M Fees payable over sixty (60) days based on the then current Contracted Capacity (subject to adjustment each Contract Year to reflect the then current Contracted Capacity) and assuming that the Power Station is operated at 71,640 kW each day for such sixty (60) day period (as adjusted from time to time the "Letter of Credit Amount"), issued by a financial institution reasonably acceptable to Owner, as security for the timely payment of all sums due to Owner hereunder from GPA. GPA covenants and agrees to provide Owner no later than thirty (30) days prior to the expiration of any existing Letter of Credit a replacement Letter of Credit in an amount equal to the then current Letter of Credit Amount. Owner shall be entitled to draw upon any Letter of Credit without further notice to GPA for any payment due to Owner from GPA that is overdue for at least fifteen (15) days. GPA further covenants and agrees, that upon the draw of funds by Owner under any Letter of Credit provided hereunder, GPA shall provide to Owner an additional Letter of Credit equal to the amount drawn under any such Letter of Credit. In the event that GPA fails to arrange issuance and funding of any Letter of Credit required hereunder within fifteen (15) days after the obligation to provide any such Letter of Credit to Owner arises, such failure shall be deemed to be a flagrant disregard of its obligations hereunder and Owner shall be entitled (following prior written notice to GPA) to (i) suspend deliveries of electricity hereunder until GPA has cured the breach of its obligations under this Clause 11.7 and (ii) draw down the outstanding balance of any Letter of Credit previously provided to Owner by GPA; provided that, so long as GPA is current with all payments due to Owner under this Agreement, Owner shall not be entitled to suspend deliveries of electricity or draw down further amounts under any Letter of Credit, in either case, pursuant to this sentence. In the event GPA fails to provide any Letter of Credit to Owner (i) in the case of the initial Letter of Credit, within sixty (60) days of the date the obligation to provide such Letter of Credit arises, or (ii) in the case of each replacement or additional Letter of Credit, within one hundred eighty (180) days of the date the obligation to provide any such Letter of Credit arises, then the provisions of Clause 17.1 shall apply. Subject to the laws of the Territory of Guam all payments made by GPA hereunder shall be made free and clear of and without any deduction for or on account of any set-off, counterclaim, tax or otherwise.

11.8 If GPA disputes the amount specified in any invoice it shall so inform Owner and GPA shall pay the undisputed amount on or before the due date of such invoice. The disputed amount shall be resolved pursuant to Clause 22. Any sum paid to Owner following resolution of such dispute shall be paid together with interest pursuant to Clause 11.6 from the due date of such invoice. No previously undisputed invoice or

payment may be disputed more than ninety (90) days after the due date of such invoice.

11.9 Notwithstanding any other term or provision of this Agreement, if Owner is unable to commence testing of the Power Station (on a date nominated by Owner) as a result of:

(i) GPA's failure to provide an adequate Transmission Line and interconnection facilities for the Power Station;

(ii) GPA's failure to provide fuel for the Power Station as required herein; or

(iii) Owner's failure to receive other than due to the fault of Owner, by the original applicable dates set forth in the Milestone Schedule, all permits, licenses, consents and other governmental approvals including without limitation the PSD Permit and the NPDES Permit and water, electricity and other utilities, in each case, required for operation of the Power Station notwithstanding its reasonable efforts to obtain the same (and assuming Owner's full compliance with the First Schedule);

then in any of such events, GPA shall be obligated to commence making payments of the Capacity Fees to Owner on the thirtieth (30th) day after Owner certifies to GPA that the Power Station is complete or would have been complete except for the non-performance as listed in (i), (ii) and/or (iii) above. The capacity for the purposes of calculating the Capacity Fees payable under this Clause shall be deemed to be the Nominal Capacity.

In the event that after Capacity Fees payments have commenced pursuant to this Clause, and when the Power Station is subsequently tested Owner is unable to pass all of the Power Station's performance tests as set forth herein, Owner will be obligated to refund or credit against future capacity made available and actually delivered to GPA, that amount of Capacity Fees actually paid to and received by Owner prior to and during such tests which exceed the amount of Capacity Fees which Owner would have been paid at the lower capacity rating actually demonstrated in the testing of the Power Station.

## 12. Time and Place of Payment

12.1 All sums payable to Owner, including without limitation the full amount of all Capacity Fees, shall be payable in dollars in Agana, Guam in same-day funds not later than 11:00 a.m., Guam time, on the day when payment is due, to the account of Owner with a bank in Guam or elsewhere that Owner shall specify to GPA in writing from time to time.

12.2 All sums payable by Owner to GPA shall be payable in same-day funds not later than 11:00 a.m., Guam time, on the day when payment is due, to the account of GPA with a bank in Guam that GPA shall specify.

12.3 If any amount payable by Owner is not paid on or before the due date, Owner shall pay interest thereon, calculated at the IRS Rate plus 3% per annum, from the date that it was due until the date upon which such amount is received by GPA.

13. Insurance

13.1 Owner covenants and agrees to ensure that there is effected insurance as provided in the Tenth Schedule. The proceeds of claims against such insurance (except third party liability and workmens' compensation insurance) shall be used by Owner for the reinstatement of the Power Station subject to the terms of any loan agreements provided in connection with the Project.

13.2. All policies of insurance (except Workmen's Compensation Insurance) required to be obtained by Owner pursuant to the Tenth Schedule shall include GPA and its employees as additional insureds as their interests may appear.

13.3 Each of GPA and Owner shall cause its insurers to waive all rights of subrogation against the other party and the other party's employees (and contractors working directly in connection with the Project) in respect of a claim arising under its insurance policies, unless such claim arises from the willful misconduct or gross negligence of the other party or the other party's employees or contractors.

13.4 Certificates of insurance, binders (if applicable), or a letter from a licensed broker or independent insurance consultant certifying compliance or documenting the status of attempts to comply with the requirements of the Tenth Schedule, shall be submitted not less than thirty (30) days prior to the Completion Date, and not less than thirty (30) days prior to any policy termination or expiration dates which arise during the term of this Agreement and any extensions. Complete copies of policies, including all declarations, terms, conditions, endorsements and exclusions, shall be made available for inspection by GPA and remain available for inspection by GPA or its insurance consultant as certification of coverage not less than ninety (90) days after the Completion Date and any policy expiration dates which arise during the term of this Agreement and any extensions.

13.5 If at any time through mutual agreement of GPA and Owner due to insurance market conditions, changes in legal requirements, or changes in the liability environment, the provisions of the Tenth Schedule are deemed obsolete, or inappropriate, those provisions may be amended.

14. Transfer of Ownership

- 14.1 On the Transfer Date Owner shall transfer to GPA, free from any lien or encumbrance created by Owner and without the payment of any compensation, all its right, title and interest in and to the fixtures, fittings, plant and equipment (including test equipment, special tools, as built drawings, software, documents, reports, analyses, all relevant files, plant procedures and forms as reasonably required and necessary for GPA to effectively operate the Power Station after the transfer) and all improvements comprising the Power Station, provided that there is no default in payment obligations by GPA that has not been cured.
- 14.2 Six (6) months prior to the Transfer Date, GPA and Owner shall meet and agree on the inventories involved, the mechanics of transfer and security arrangements but Owner shall not be liable for any discrepancies between such inventories and the actual fixtures, fittings, plant and equipment transferred provided that following agreement on inventories Owner shall exercise the same care regarding the fixtures, fittings, plant and equipment and all improvements therein as it did prior to agreeing to the same and provided further that GPA shall be entitled to provide a security unit within the Site.
- 14.3 The Power Station and all other equipment transferred pursuant to this Clause 14 shall be transferred on an "AS IS, WHERE IS" basis and any warranties which would otherwise be implied by statute or otherwise, including, without limitation, warranties as to title, fitness for a particular purpose, the absence of patent or inherent defects, description or otherwise of whatsoever nature will be excluded; provided that nothing in this Clause 14.3 shall be construed to affect Owner's obligation to maintain the Power Station during the Co-operation Period in accordance with this Agreement. From and after the Transfer Date Owner shall be under no liability whatsoever to GPA in respect of the operation or otherwise of the Power Station by GPA or a person designated by GPA and GPA shall indemnify and keep indemnified Owner against any liability to any person arising from the use or operation of the Power Station after the Transfer Date; provided however that Owner shall subrogate or assign to GPA any and all rights and benefits which it is able to subrogate or assign of any unexpired warranties, licenses or permits in respect of the building, plant and equipment of the Power Station under applicable laws or otherwise. Owner agrees to cooperate with GPA in affecting the physical transfer of the Power Station to the extent reasonably necessary.
- 14.4 GPA shall be responsible for all costs and expenses (including legal fees and taxes or duties) incurred in connection with the transfer referred in this Clause 14 and shall at its own cost obtain or effect all governmental and other approvals, licenses, registrations and filings and take such other action as may be necessary for the transfer contemplated in this Clause 14, and reimburse Owner on demand for all such costs and expenses incurred by Owner in respect of such transfer.

## 15. Liability and Indemnification

- 15.1 In the event that, in breach of its obligations hereunder, Owner fails to construct the Power Station, GPA shall have no obligation to reimburse and indemnify Owner for all reasonable documented out of pocket costs and liabilities incurred by Owner in complying with its obligations under Clause 3.
- 15.2 Owner's liability to GPA arising from any breach of this Agreement or otherwise in connection with the design, construction and operation of the Power Station shall be limited to payments as provided in Clauses 5.3 and 5.4 and the penalties as provided in Section 4.5 of the Eighth Schedule.
- 15.3 GPA shall indemnify and hold Owner, its officers and employees harmless against any claim of any person who directly or indirectly suffers as a result of an interruption of electricity supply or any disruption or surge of electricity supply arising out of or in connection with this Agreement and any of Owner's, its officers' or employees' actions or omissions in connection with the same except if such claim is due to Owner's or Owner's officers or employees gross negligence or intentional misconduct.
- 15.4 Subject to Clause 15.3, Owner shall hold GPA, its officers and employees free of and harmless from any claims or suits of any third party, other than claims for economic loss, arising from Owner's operation of the Power Station, except if such claim is due to GPA's or GPA's officers or employees gross negligence or intentional breach of this Agreement.
- 15.5 Without prejudice to Clause 15.4, Owner shall indemnify and hold harmless GPA (and its officers and employees) from and against all damages, losses and reasonable expenses, suffered or paid by GPA as a result of any and all claims for personal injury, death or property damage to third parties due to an event occurring before the termination of this Agreement and arising directly out of the construction, operation or maintenance of the Power Station and resulting from any act or omission of Owner or its agents or employees. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Clause 15.5 shall apply to any loss, damage, cost or expense in respect of which, and to the extent that, GPA (or its officers and employees) is otherwise compensated pursuant to the terms of any other agreements entered into with Owner with respect to the Project or any insurance.
- 15.6 Without prejudice to Clause 15.3, GPA shall indemnify and hold harmless Owner (and its officers and employees) from and against all damages, losses and reasonable expenses, suffered or paid by Owner as a result of any and all claims for personal injury, death or property damage to third parties due to an event occurring before the termination of this Agreement and resulting from any act or omission of GPA or its agents or employees. Notwithstanding anything to the contrary contained in the preceding sentence, nothing in this Clause 15.6 shall apply to any loss, damage, cost

within any place, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of any governmental authority, or fire, unusual flood, earthquake, storm, typhoon, lightning, tide (other than normal tides), tidal wave, perils of the sea, accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals, or other assistance to or adjuncts' of the shipping or navigation, epidemic, quarantine, strikes or combination of workmen, lockouts or other labor disturbances, or any other event, matter or thing, wherever occurring, which shall not be within the reasonable control of the party affected thereby;

(b) war, declared or not, or hostilities involving the United States of America or the Territory of Guam, or of belligerence, blockade, revolution, insurrection, riot, public disorder, expropriation, requisition, confiscation or nationalization by or involving the Territory of Guam, export or import restrictions by any governmental authorities of or within the Territory of Guam, closing of harbors, docks, canals, or other assistance to or adjuncts of the shipping or navigation of or within the United States of America or the Territory of Guam, rationing or allocation, whether imposed by law, decree or regulation by, or by compliance of industry at the insistence of any governmental authority of or within the Territory of Guam, or failure of any governmental authority to issue any permits, consents, licenses or approvals required for the Project in sufficient time to allow the dates indicated in the Milestone Schedule to be achieved or any other event, matter or thing, wherever occurring, which shall be within the reasonable control of GPA or the Territory of Guam or any agency, regional or municipal authority thereof.

each of the foregoing events, matters or things being called "Force Majeure" in this Agreement.

16.2 Notwithstanding Clause 16.1 GPA (i) shall not be entitled to claim for itself Force Majeure in respect of any Force Majeure mentioned in sub-paragraph (b) of Clause 16.1; and (ii) shall not be relieved of its obligation to make payments of Capacity Fees as provided in Clause 11.1 by the occurrence of any Force Majeure mentioned in sub-paragraph (b) of Clause 16.1 whether affecting GPA or Owner.

16.3 The party invoking Force Majeure shall:

(a) notify the other party as soon as reasonably possible by fax, telex or cable of the nature of the Force Majeure and the extent to which the Force Majeure suspends the affected party's obligations under this Agreement; and

(b) resume performance of its obligations as soon as possible after the Force Majeure condition no longer exists.

- 16.4 If Force Majeure applies prior to the Completion Date the parties will meet to discuss a revised timetable for the completion of the Project and if the Force Majeure has applied for a period in excess of one hundred eighty (180) days and such Force Majeure is mentioned in sub-paragraph (b) of Clause 16.1 the provisions of Clause 17.1 shall apply. Subject to Clause 16.5, if Force Majeure applies pursuant to the terms of sub-paragraph (a) of Clause 16.1 during the Co-operation Period, the Co-operation Period shall be extended by a period equal to that during which the effect of the Force Majeure applies.
- 16.5 If a Force Majeure which applies pursuant to the terms of sub-paragraph (a) of Clause 16.1 prevents, or it is apparent that such Force Majeure will prevent, Owner from constructing the Power Station or operating the Power Station for a continuous period of more than twenty four (24) months or if the cost to reinstate or complete the building of, as the case may be, the Power Station exceeds the proceeds of claims against the insurance carried by Owner pursuant to Clause 13 and the Tenth Schedule (except third-party liability and workmen's compensation insurance) by more than \$5,000,000, then, in either case, Owner shall not be obliged to reinstate the Power Station, or, as the case may be, complete the building of the same, until the parties hereto have agreed upon the terms for such reinstatement or completion; provided, that in the event agreement is not reached as soon as practicable, but in no event later than ninety (90) days, of the Force Majeure occurrence then the provisions of Clause 17.1 shall apply.
- 16.6 The parties hereto will consult with each other and take all reasonable steps to minimize the losses of either party resulting from Force Majeure.
- 16.7 If any event of Force Majeure occurs which causes damage to the Project or the Power Station and such event or such damage would not ordinarily be insured against by GPA and in fact was not insured against, then Owner shall not be obliged to reinstate the Power Station, or, as the case may be, complete the building of the same, until the parties hereto have agreed upon the terms for such reinstatement or completion; provided, that in the event agreement is not reached within thirty (30) days of the Force Majeure occurrence then the provisions of Clause 17.1 shall apply.

17. Termination and Buyout

- 17.1 If the circumstances set out in Clause 11.7, Clause 16.4, Clause 16.5, Clause 16.7 or Clause 18 arise or if, not earlier than five (5) years after the Completion Date, GPA gives not less than forty five (45) days notice to Owner that either it wishes to close the Power Station or it wishes to move the diesel engines to elsewhere in Guam or if, GPA has failed to ensure the due payment of any sum due hereunder within forty five (45) days of its due date, or breaches any other material obligation under this Agreement and fails to cure such breach within forty five (45) days, or if, GPA commits a default under the Navy Lease or the Sublease which, in either case, has a material



adverse affect on Owner's rights hereunder or Owner's ability to perform its obligations hereunder, or the Navy Lease is terminated for any reason other than due to the fault of Owner then, upon Owner giving to GPA not less than forty five (45) days notice requiring GPA to buyout Owner or, as the case may be, GPA giving not less than forty five (45) days notice requiring Owner to sell out to GPA, GPA shall purchase all Owner's right, title and interest in and to the Power Station and thereupon all Owner's obligations hereunder shall cease.

- 17.2 In respect of any transfer of interest in the Power Station pursuant to Clause 17.1 the provisions of Clause 14 (other than Clauses 14.1 and 14.2) shall apply thereto and Owner shall warrant that following such transfer the Power Station shall be free from any lien or encumbrance created by Owner.
- 17.3 Subject to Clause 17.4 and Clause 17.7, the purchase price in dollars, payable pursuant to Clause 17.1 will be the total amount of the Capacity Fees payable to Owner pursuant to Clause 11.1 until the Transfer Date upon the assumption that the Contracted Capacity during each year of the Co-operation Period for such period is equal to the lower of the average Contracted Capacity nominated by Owner in each of the previous Contract Years and the Nominal Capacity and the resulting figure discounted to its value on the date of completion of the buyout by applying a discount rate equal to the last published IRS Rate.
- 17.4 If the provisions of Clause 17.1 apply prior to the Completion Date, the purchase price payable shall be an amount equal to the aggregate of all the costs, expenses and liabilities incurred by Owner in connection herewith as estimated by an independent accountant jointly appointed by both parties plus an amount equal to fifteen percent (15%) of such aggregate; provided that the fifteen percent (15%) addition to Owner's costs, expenses and liabilities shall not apply in the case of a purchase pursuant to Clause 17.1 due the circumstances set out in Clause 16.5, Clause 16.7 or as Clause 18 applies to laws, regulations, approvals, registrations, exemptions or other requirements of the government of the United States of America or a Governmental Instrumentality thereof (otherwise Clause 17.3 applies for a change in circumstances under Clause 18) and which, in each case, occurs prior to the Completion Date. If the provisions of Clause 17.1 apply due the circumstances set out in Clause 16.5, Clause 16.7 or as Clause 18 applies to laws, regulations, approvals, registrations, exemptions or other requirements of the government of the United States of America or a Governmental Instrumentality thereof (otherwise Clause 17.3 applies for a change in circumstances under Clause 18) and which, in each case, occurs during the Co-operation Period, the applicable purchase price payable with respect to the Contract Year in which the

provisions of Clause 17.1 apply shall be in accordance with the following schedule:

Contract Year	Purchase Price
First	U.S.\$ 133,099,000
Second	U.S.\$ 125,066,000
Third	U.S.\$ 118,033,000
Fourth	U.S.\$ 110,969,000
Fifth	U.S.\$ 103,874,000
Sixth	U.S.\$ 97,177,000
Seventh	U.S.\$ 91,049,000
Eighth	U.S.\$ 84,886,000
Ninth	U.S.\$ 78,687,000
Tenth	U.S.\$ 72,450,000
Eleventh	U.S.\$ 66,174,000
Twelfth	U.S.\$ 59,857,000
Thirteenth	U.S.\$ 53,498,000
Fourteenth	U.S.\$ 47,096,000
Fifteenth	U.S.\$ 40,649,000
Sixteenth	U.S.\$ 34,156,000
Seventeenth	U.S.\$ 27,614,000
Eighteenth	U.S.\$ 21,023,000
Nineteenth	U.S.\$ 14,704,000
Twentieth	U.S.\$ 8,784,000

- 17.5 Completion of a buyout pursuant to Clause 17.1 shall take place on the date of the expiry of the notice specified therein at which time GPA will pay to Owner the purchase price calculated in accordance with Clause 17.3 or, as the case may be, Clause 17.4 and payable in dollars and Owner shall warrant that following such buyout the Power Station shall be free from any lien or encumbrance created by Owner.
- 17.6 In the event that the provisions of Clause 17.1 apply pursuant to Clause 16.4 or 16.5 then there shall be deducted from the sum payable pursuant to Clause 17 an amount equal to the value, if any, of any insurance proceeds received by Owner from insurance maintained in accordance herewith in respect of the event leading to the operation of the provisions of Clause 16.4 or 16.5, as the case may be.
- 17.7 In the event of a breach by Owner of any of its material obligations under this Agreement or the Sublease which is not remedied within thirty (30) days after notice from GPA to Owner stating that such breach has occurred, identifying the breach in question and demanding remedy thereof, Owner shall provide GPA with a remedial program within thirty (30) days of such notice and proceed to diligently implement such remedial program. In the event (i) Owner fails to implement the remedial program with due diligence, (ii) it is demonstrated that the remedial program fur

nished is incapable of being reasonably implemented or (iii) it is demonstrated that Owner is unable to remedy the breach notwithstanding the exercise of due diligence by Owner in implementing the remedial program, then, in any such event, GPA may give notice to Owner that it intends to terminate this Agreement on the date provided in the notice, which date shall not be less than thirty (30) days after the date of such notice and the provisions of Clauses 17.1, 17.2, and 17.5 shall apply. If the provisions of Clause 17.1 apply due to the circumstances set out in this Clause 17.7 which occur prior to the Completion Date, the purchase price payable shall be an amount equal to the lesser of (i) the aggregate of all the costs, expenses and liabilities incurred by Owner in connection herewith as estimated by an independent accountant jointly appointed by both parties and (ii) the fair market value of the Project determined by an independent appraiser appointed by the parties. If the provisions of Clause 17.1 apply due to the circumstances set out in this Clause 17.7 which occur during the Cooperation Period, the purchase price payable shall be equal to (i) the amount required to repay the principal amount of all loans committed to Owner to finance the Project outstanding on the date of termination of this Agreement and (ii) interest due and payable pursuant to the applicable loan agreements on the amount determined pursuant to sub-clause (i) of this sentence. Concurrently with any notice to Owner of a breach under this Clause 17.7, GPA shall provide notice to Owner's lenders providing financing for the Project.

18. Change in Circumstances

In the event that (a)(i) as a result of any laws or regulations of the Territory of Guam or the United States of America, or any governmental instrumentality, agency or other body under the control of the Government of Guam or the Government of the United States or any regional or municipal authority thereof (collectively, "Governmental Instrumentality"), coming into effect after the date hereof, or (ii) as a result of any such laws or regulations (including any official interpretation thereof which Owner has relied upon in entering into this Agreement) in force at the date hereof being amended, modified or repealed or any action or failure to act by any Governmental Instrumentality, or (b)(i) as a result of any approvals, consents, registrations, exemptions or other requirements of the Territory of Guam or the United States of America, or any Governmental Instrumentality, coming into effect after the date hereof, or (ii) as a result of approvals, consents, registrations, exemptions or other requirements (including such approvals, consents, registrations, exemptions or other requirements provided for in Clauses 7.2 and 7.3 and the Ninth Schedule which Owner has relied upon in entering into this Agreement) of the Territory of Guam or the United States of America, or any Governmental Instrumentality being withdrawn, rescinded or amended or any new required extension, approval, consent, registration or other requirement of the Territory of Guam or the United States of America, or any Governmental Instrumentality cannot be obtained, the interest of Owner in the Project or the Power Station and/or Owner's economic return (net of tax (other than income tax imposed on Owner) or other imposition) on its investment is materially reduced, prejudiced or

otherwise adversely affected (including without limitation any restriction on the ability to remit funds in dollars outside of Guam) then the parties hereto shall meet and endeavor to agree to amendments to this Agreement and if, after ninety (90) days no such agreement has been reached, the provisions of Clause 17.1 shall apply. A reduction of \$100,000 in the aggregate in Owner's expected economic return shall be considered a material reduction of Owner's investment for purposes of this Clause 18.

19. Benefit of Agreement

19.1 GPA may not assign or transfer all or any part of its rights, benefits or obligations hereunder without the written consent of Owner and its lenders providing financing for the Project.

19.2 Except as provided in this Clause 19.2, Owner may not assign or transfer all or any of its obligations hereunder but may, without the consent of GPA assign or transfer to an Affiliate all or any part of its rights or obligations or, for the purpose of arranging or rearranging finance for the Project, assign or transfer to any lender providing finance to the Project all or any part of its rights and benefits hereunder but not its obligations. GPA hereby irrevocably consents to the assignment of Owner's rights hereunder to any lender providing finance for the Project and agrees, to accept the agent for the lenders, any designee or transferee of such agent or any purchaser of Owner upon a foreclosure sale on behalf of the lenders of Owner's interest in the Project, as a substitute for Owner under this Agreement, to afford lenders an opportunity to remedy the event giving rise to a notice from GPA under Clause 17.7 prior to giving effect to any termination of this Agreement; and to confirm such consent and such agreements in a written consent and agreement to be entered into by GPA with the lenders, which consent and agreement may contain other reasonable provisions customary in financing of international power projects. GPA further agrees to provide all further assurances and to execute any additional documents as the lenders may reasonably require. Owner acknowledges and agrees that any assignment to a secured party pursuant to any financing of the Project shall not relieve Owner of its performance obligations to GPA under this Agreement.

20. Warranty

Owner hereby warrants that neither it nor its representatives have offered any government officer and/or GPA official or employee any consideration or commission for this Agreement nor has it or its representatives exerted or utilized any corrupt or unlawful influence to secure or solicit this Agreement for any consideration or commission; that Owner shall not knowingly subcontract any portion or portions of the scope of the work of the Agreement awarded to any official or employee of GPA or to the relatives within the third degree of consanguinity or affinity of GPA officials who are directly or indirectly involved in contract awards or project prosecution and that if any commission is being paid to a private person, Owner shall disclose the

name of the person and the amount being paid and that any violation of this warranty shall constitute a sufficient ground for the rescission or cancellation of this Agreement or the deduction from the contract price of the consideration or commission paid without prejudice to the filing of civil or criminal action under applicable laws against Owner and/or its representatives and GPA's officials and employees.

21. **Notices**

21.1 Unless otherwise stated, each communication to be made hereunder shall be made in writing but, unless otherwise stated, may be made by facsimile or certified mail. Such communications shall be addressed as follows:

If to GPA:                   GUAM POWER AUTHORITY  
                                  General Manager  
                                  P. O. Box 2977  
                                  Agana, Guam 96910  
                                  Telephone: (671) 649-6875  
                                  Facsimile: (671) 649-6942

If to Owner:               ENRON DEVELOPMENT PITI CORP.  
                                  c/o Enron Development Corp.  
                                  333 Clay Street  
                                  Suite 1800  
                                  Houston, Texas 77002  
                                  U.S.A.  
                                  Attn: General Counsel  
                                  Telephone: (713) 646-6017  
                                  Facsimile: (713) 646-6227

21.2 Any communication or document to be made or delivered by one party to another pursuant to this Agreement shall be made or delivered to that other at its address specified above or such other address notified by that party to the other parties by giving not less than fifteen (15) days notice of such change of address, and shall be deemed to have been made or delivered (i) in the case of any communication made by facsimile transmission with correct answerback (at the number identified with the relevant party's signature below), when transmitted and clearly received with a copy sent by certified mail to the address specified above, and (ii) in the case of any communication made by certified mail, when left at that address or otherwise received by the addressee.

22. **Dispute Resolution**

22.1 Throughout the term of this Agreement representatives of the directors of GPA and Owner shall meet regularly at not less than yearly intervals to discuss the progress of

the Project and the operation of the Power Station in order to ensure that the arrangements between the parties hereto proceed on a mutually satisfactory basis.

- 22.2 The parties hereto agree that in the event that there is any dispute or difference between them arising out of or in connection with this Agreement or in the interpretation of any of the provisions hereof or the breach, termination or validity of this Agreement (a "Dispute") the steering committee shall meet together within five (5) days of one party notifying the other party of a Dispute in an effort to resolve such Dispute by discussion between them but failing to resolve such Dispute within a further five (5) day period, the Chief Executives of GPA and Owner shall then meet to resolve such Dispute and the joint decision of such Chief Executives shall be binding upon the parties hereto; provided, that in the event that a settlement of any such Dispute is not reached pursuant to this Clause 22.2 within thirty (30) days of one party notifying the other party of a Dispute then the provisions of Clause 22.3 shall apply.
- 22.3 Where any Dispute is not resolved as provided for in the preceding Clauses 22.1 and 22.2, such Dispute shall be resolved pursuant to the Government Claims Act (5 G.C.A. § 6101 et seq.).
- 22.4 During the pendency of any Dispute pursuant hereto, Owner shall continue to perform its obligations hereunder to produce and deliver energy to GPA and to conduct required tests of the Power Station and GPA shall continue to pay all amounts due hereunder and not in dispute, without setoff, during the pendency of such Dispute; provided that, in addition to Owner's rights pursuant to Clause 11.7, Owner shall have the right to suspend deliveries of energy hereunder if GPA fails to make any payment due under this Agreement and such payment remains outstanding following fifteen (15) days notice from Owner.

23. **Law**

This Agreement shall be governed by and construed in accordance with the laws of the Territory of Guam.

24. **Jurisdiction**

To the extent that GPA may in any jurisdiction claim for itself or its assets or revenues immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed) GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.

25. **Severability**

A holding of any court of competent jurisdiction that any provision of this Agreement is invalid shall not result in invalidation of the entire Agreement. Instead, this Agreement shall be construed, if possible, in a manner to give effect by means of valid provisions to the intent of the parties to the particular provision or provisions held to be invalid, and, in any event, all other terms shall remain in full force and effect.

26. **Survival of Provisions**

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

27. **Entire Agreement**

This Agreement, including the Schedules hereto, contains all of the understandings and agreements of whatsoever kind and nature with respect to the subject matter of this Agreement and the rights, interests, understandings, agreements and obligations of the parties relating thereto. The Schedules hereto shall be deemed to be part of this Agreement and are hereby incorporated herein by reference. All prior written or oral understandings, offers or other communications of every kind concerning the subject matter hereof are hereby abrogated and withdrawn and shall not affect or modify any of the terms or obligations set forth in this Agreement.

28. **Industrial Property Rights**

Owner warrants that, to the extent necessary to comply with its obligations under this Agreement, Owner has a suitable license or other legal right to all patents, trademarks and copyrights which may subsist in the design of the Power Station and shall pay all royalties and license fees that are due in connection therewith during the term of this Agreement. Owner warrants that the design of the Power Station, the contemplated operation thereof or the use of any component unit thereof by GPA shall not infringe any patent, trademark or copyright of any third person. Owner shall indemnify GPA against any penalties and liability of every kind for Owner's breach of the warranties contained in this Clause 28.

29. **Representations and Warranties**

29.1 Owner represents and warrants that:

(i) Owner is a corporation duly organized and validly existing under the laws of Delaware, is or will be licensed to do business in Guam as necessary to

perform its obligations under this Agreement and has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions hereof;

(ii) All legislative, administrative and other governmental action required to authorize the execution and delivery, and all non-Guam, and to Owner's knowledge after the due inquiry, all Guam, legislative, administrative and other governmental action required to authorize the performance by Owner of this Agreement and the transactions contemplated hereby have been taken, except to the extent of actions which are to be taken at a later time;

(iii) This Agreement constitutes the valid, legal and binding obligation of Owner, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(iv) There are no actions, suits or proceedings pending or, to Owner's knowledge, threatened, against or affecting Owner before any court or administrative body or arbitral tribunal that might materially adversely affect the ability of Owner to meet and carry out its obligations under this Agreement; and

(v) The execution, delivery and performance by Owner of this Agreement have been duly authorized by all requisite corporate action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound.

29.2 GPA represents and warrants that:

(i) GPA has all requisite legal power and authority to execute this Agreement and to carry out the terms, conditions and provisions hereof;

(ii) All legislative, administrative or other governmental action required to authorize the execution, delivery and performance by GPA of this Agreement and the transactions contemplated hereby have been taken and are in full force and effect;

(iii) This Agreement constitutes the valid, legal and binding obligation of GPA, enforceable in accordance with the terms hereof except as the enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting creditors' rights generally;

(iv) There are no actions, suits or proceedings pending or, to GPA's knowledge, threatened, against or affecting GPA before any court or administrative body or arbitral tribunal which might materially adversely affect the ability of GPA to meet and carry out its obligations under this Agreement; and



(v) The execution, delivery and performance of this Agreement by GPA have been duly authorized by all requisite agency action, and will not contravene any provision of, or constitute a default under, any other agreement or instrument to which it is a party or by which it or its property may be bound;

29.3 Each party agrees to deliver a certificate, signed by a duly authorized officer, to such effect to the other party on the Effective Date that its representations and warranties contained or incorporated by reference herein are true and correct in all material respects on and as of the Effective Date with the same force as though made on and as of the Effective Date, except for changes due to the passage of time.

30. **Third-Party Beneficiaries**

This Agreement is intended to be solely for the benefit of Owner and GPA and their successors and permitted assigns and is not intended to and shall not confer any rights or benefits on any third party not a signatory hereto.

31. **Joint Effort**

The parties acknowledge and agree that the terms and conditions of this Agreement have been freely and fairly negotiated. Each party acknowledges that in executing this Agreement it has relied solely on its judgment, belief, and knowledge, and such advice as it may have received from its own counsel and it has not been influenced by any representation or statements made by any other party or such party's counsel. No provision in this Agreement is to be construed for or against any party because that party or its counsel drafted such provision.

32. **Amendments**

This Agreement may be amended at any time by mutual agreement of the parties in writing and signed by a duly authorized representative of each party.

33. **Compliance with Laws**

Owner and GPA shall comply with all applicable laws and shall comply in all material respects with and shall keep in full force and effect all governmental authorizations required to be in their respective names for the performance of their respective obligations under this Agreement.

34. **Change Orders**

34.1 Either party may by notice to the other party request a change to the Specifications, Project Scope or Operating Parameters; provided that, subject to the provisions of this Clause 34, Owner shall be obligated to carry out any change order requested hereun-

der that is required to obtain the PSD Permit, NPDES Permit or the other permits, licenses, approvals or consents listed in the Ninth Schedule. Prior to any change order being issued, the party requesting the change order shall notify the other party of the nature and form of the proposed change. No later than thirty (30) days after having received such notice or such other period as may be mutually agreed between Owner and GPA, Owner shall submit in writing to GPA: (i) a description of work, to be performed and a programme for its execution; (ii) Owner's proposals for any necessary modifications to the Target Completion Date (if applicable) or to any of Owner's obligations under this Agreement; and (iii) Owner's proposals for adjustment to the Capacity Fees (if any).


34.2 Following the receipt of Owner's submission, GPA shall, after due consultation with Owner, decide as soon as possible, but in any event within thirty (30) days, whether or not it approves the change proposed be carried out. If GPA approves the change to be carried out, GPA shall issue a confirmation of change order in writing. If GPA and Owner are unable to agree on the adjustment of the Capacity Fees, any extension to the Target Completion Date (if applicable) or any other required modification to this Agreement, the parties shall negotiate in good faith to endeavor to reach an agreement; provided that either party may proceed at any time under Clause 22 to resolve such disagreement.

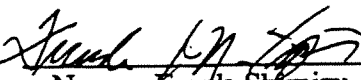
34.3 On receipt of a confirmation of change order, Owner shall forthwith proceed to carry out the change and be bound by this Agreement in so doing as if such change was stated in this Agreement without further action required by the parties. The work required pursuant to any change order shall be delayed pending the granting of an extension of the Target Completion Date, an adjustment to the Capacity Fees or any other required modifications to Owner's obligations under this Agreement. Owner shall have no obligation to proceed with a change order requested pursuant to Clause 8.9 or this Clause 34 until the disagreement with regard to any such change order is resolved.

34.4 No change shall be made which will interfere with or disrupt Owner's construction, operation or maintenance of the Power Station or that would affect Owner's rights or obligations under this Agreement, except in accordance with this Clause 34. All changes proposed by GPA under Clause 8.9 and this Clause 34 are subject to the rights of Owner's lenders providing financing for the Project.


IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by its duly authorized officer in more than one copy each of which shall be deemed to be an original as of the day and year first above written.

GUAM POWER AUTHORITY

By:   
Name: Ricardo S. Unpingco  
Title: Acting General Manager

By:   
Name: Frank Shimizu  
Title: Chairman

ENRON DEVELOPMENT PITI CORP.

By:   
Name: Apolonio Baca  
Title: Authorized Representative

Territory of Guam) .s.s.

City of Agana)

ACKNOWLEDGEMENT

BEFORE ME, a Notary Public for and in Agana, Guam, this 30th day of September, 1996, personally appeared:

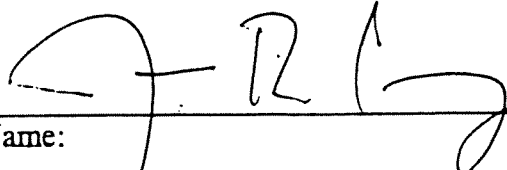
Apolonio Baca authorized representative of Enron Development Piti Corp.; and

Ricardo S. Unpingco, in his capacity as General Manager of Guam Power Authority;

Frank Shimizu, in his capacity as Chairman of the Board of Guam Power Authority;

known to me and to me known to be the same persons who executed the foregoing agreement consisting of 96 pages including the cover page, the table of contents, the page on which this acknowledgement is written and the Schedules, and they acknowledged to me that the same is their free and voluntary act and deed and the free and voluntary act and deed of the corporation, government agency and territory which they respectively represent.

WITNESS MY HAND AND NOTARIAL SEAL at the place and date first written above.

  
Name: \_\_\_\_\_

A Notary Public

Doc. No. \_\_\_\_\_

Page No. \_\_\_\_\_

Book No. \_\_\_\_\_

JESSE R. CRUZ  
NOTARY PUBLIC  
In and for the Territory of Guam, U.S.A.  
My Commission Expires: Feb. 15, 1999  
P.O. Box 2977, Agana, Guam 96910

## FIRST SCHEDULE

### PROJECT SCOPE AND SPECIFICATIONS

#### I. Scope of Agreement

Owner shall be responsible for the design, supply, delivery, installation/erection including civil works, testing and commissioning of a diesel engine power station.

#### II. The Site

The Site is located within the existing Piti power station site of GPA in Piti, Guam adjacent to the existing substation. A minimum of 5 acres of land will be made available for the Power Station with the geometry of such area to be agreed by the parties under the Site lease to be entered into between GPA and Owner.

#### III. Extent of Works/Supply

In pursuance to its obligations under Section I, Owner shall be responsible for:

1. Complete design, development and construction on the Site of the Power Station, with Black Start capability, based on the final mix of engine units determined by Owner, which shall not be less than two (2) engines.
2. Civil Works
  - 2.1 Site development including grading, gravel surfacing and drainage facilities.
  - 2.2 Construction of spread footing type concrete foundations and/or pilings if required.
  - 2.3 Construction of access road within the Site as required to supplement existing access roads and permanent fence around the Site.
  - 2.4 Construction of electrical duct banks.
  - 2.5 Construction of office, laboratory, workshop, and warehouse facility.
  - 2.6 Construction of an oil/water separator and a sanitary treatment system.
  - 2.7 Provide six (6) days inventory level fuel oil storage tanks on site.

- 2.8 Provide road/tanker unloading and receiving facility.
- 2.9 Disassemble and remove existing equipment of units 1,2 and 3 at the Piti power plant, including asbestos removal and disposal. The following criteria shall apply:
  - 1) Existing stack is excluded.
  - 2) Any environmental clean-up, other than asbestos removed is excluded.
  - 3) Units 1, 2 and 3 have been properly decommissioned for dismantling.
  - 4) Disposal of equipment is accomplished in a manner approved by relevant governmental authorities.
  - 5) Existing substation control center is excluded.
- 2.10 Construction of a 60 meter stack.
- 2.11 Relocation of two (2) 13.8 kV feeder lines (units 4 & 5 of Piti Power Station) to allow for clear access to site.
- 2.12 Construction main building to have engine generators with concrete walls.

### 3. Electro-Mechanical Works

**Supply, installation/erection, tests and commissioning to put into operation the required number of generation units and its corresponding minimum gross aggregate capacity of 79.6MW (subject to the provisions of Clause 5.5)**

- 3.1 Engine-generator packages consisting of the engine and its auxiliaries, including air intake system, exhaust gas system, cooling system, lubricating system, fuel oil system and starting system.
- 3.2 Generator, complete with necessary equipment and accessories.
- 3.3 Electrical equipment; including main and auxiliary transformers; metal clad switchgear, control switchboard; motor control center, including control panels, direct current system complete with battery chargers, inverters; interconnection to the Transmission Line; local metering, line protection and PLC equipment compatible with the existing GPA grid (which will be notified to Owner within thirty (30) days of execution of this Agreement).

- 3.4 Required instrumentation and indicators for protection and control of engine-generator units and their auxiliaries, complete with necessary supervisory devices, RTU's electronic modules for control & protection and data acquisition system, for safe and reliable operation of the Power Station.
- 3.5 Air conditioning system for the protection of electrical equipment and instruments at the local control room.
- 3.6 Fire protection and alarm systems.
- 3.7 Instrument and plant air systems.
- 3.8 Handling facilities for maintenance and repair.
- 3.9 Miscellaneous electrical works, including lighting, grounding and lightning protection.
- 3.10 Voice and data communications systems will be installed inside the Power Station and to and from GPA power management center, details of which will be notified to Owner prior to December 31, 1996.
- 3.11 Fuel oil valve and piping system and metering.
- 3.12 Water tank, hydrant and piping systems.
- 3.13 Special tools.

**IV. Design Criteria**

- 1. The engine-generator units with an aggregate net capacity of not less than 79.6MW (subject to the provisions of Clause 5.5) shall be capable of delivering the said output at the following Site conditions:
  - 1.1 Elevation (Above Mean Sea Level) - 5 meters
  - 1.2 Average ambient air temperature - 27.9° Centigrade
  - 1.3 Relative humidity - 86%
  - 1.4 Temp. range - 25-37° C
  - 1.5 Environmental Regulations - to comply with permits and applicable laws subject to change orders pursuant to this Agreement. Mitigation for NO<sub>x</sub> emissions is provided in the form of a water emulsion system for the

fuel at a ratio of two parts of fuel to one part of water.

2. Heat Rates

The guaranteed heat rate shall be based on the net kilowatt output for the conditions specified in paragraph 1 of Section IV above at average ambient temperature and the Higher Heating Value (HHV) of the fuel as specified in the Fourth Schedule. The guaranteed heat rate is also based on clean fuel to the engines without water injection or other methods for emissions control.

3. Fuel

Fuel specifications will be in accordance with the Fourth Schedule.

4. System Fault Level

The present 115 KV bus fault level when the engine-generator units are connected in the GPA grid shall be as follows:

- 4.1 Line to ground fault : TBD MVA
- 4.2 3-phase fault : TBD MVA
- 4.3 Interrupting Capacity  
at 13.8 kV : 25 kA  
at 115 kV : 31.5 kA

5. System Voltage Level

- 5.1 Generator terminal voltage : 13.8 kV +/-5%
- 5.2 Main transformer:  
High Voltage (Nominal) : 115 kV  
Off Load Tap Change : ±5%  
Low Voltage : 115 kV

5.3 Nominal voltage for auxiliary equipment (for information purposes)

AC System : 4.16 kV, 480 V, 120 Volts

DC System : 125 V



6. System Frequency

The system frequency shall be 60 Hertz plus or minus 2.5%.

7. Generator and Accessories

The generator shall be designed to match the engine-generator units to assume base and peak operating modes. The design characteristics shall be as follows:

7.1 Nominal MVA power output at rated power factor (40°C ambient temperature, 48.1 MVA)

7.2 Three phase wye grounded, through resistance

7.3. Rated terminal voltage : 13.8 kV /+ or - 5%

7.4 Rated power factor : 0.85 lagging; 0.95 leading

7.5 Short circuit ratio (saturated)

The measured value of the short circuit ratio at rated MVA and rated voltage shall be not less than (0.63).

7.6 Allowable voltage variations

At rated MVA, frequency, power factor and inlet air temperature, the engine-generator can operate satisfactorily even though the terminal voltage may vary +/-5% of the rate value.

8. Design Basis

The Owner has based the proposed design on a two (2) engine/generator low speed design and all of the design criteria included in this Section IV is consistent with that design. However, Owner reserves the right to install three (3) engine/generators to meet the required generation capacity.

V. Utilities During Construction Period

Requirements

To be supplied by GPA according to Clause 2.6 and Clause 3.6 and the Fourth Schedule.

VI. Utilities During Co-operation Period  
Requirements

To be supplied by GPA according to Clause 2.9, 2.10 and 3.6 and the Fourth Schedule.

SECOND SCHEDULE  
OPERATING PARAMETERS

A. Operating Parameters

Owner shall operate the Power Station in accordance with the operating criteria and guidelines of GPA, provided that GPA may not require the Power Station to operate at any time (including Emergencies) such that any equipment of the Power Station would be operated outside the performance range recommended by the manufacturer or supplier of such equipment or if such operation would pose a safety hazard to any personnel or equipment within the Power Station or the Site. Subject to the foregoing, Owner shall cooperate with GPA in establishing emergency plans including but not limited to recovery from a local or widespread electrical blackout; voltage reduction to effect load curtailment and other plans which may arise. Owner shall make technical references available concerning start-up times, Black Start capabilities, and minimum load carrying ability, broken down into:

1. Capacity

Subject to the provisions of Clause 5.5, the capacity of the Power Station shall not be less than 79.6 MW at 27.9°C ambient temperature, as measured at the high side of the main output transformer.

2. Frequency Limitation

The frequency limitation of engine-generator set(s) for continuous operation shall be between the range of 58.5 Hz and 61.5 Hz.

The under frequency tripping relay shall be set at 58.2 Hz.

The engine-generator overspeed trip shall be set at 10% above normal speed.

3. Normal Voltage

The normal voltage at the high side of the step-up transformer shall be 115 kV, plus or minus 5 percent.

4. Load Sharing Operation

The units shall operate satisfactorily and without structural damage in daily load sharing from 100 percent of the Contracted Capacity to the minimum

capacity of the units depending on the dispatch requirements of GPA Power Management Center as further provided in the Sixth Schedule.

**5. Range and Ratio of Load Changing**

At normal operation mode, the generating units shall be capable of being operated as follows:

- o Engine preparation and start up to synchronous speed not less than : 8 minutes/engine
- o Synchronizing and loading to full load under normal conditions, ramp increase no more than : 8 minutes to 90% load; 30 minutes from 90% to 100% load
- o Engine operation shall be limited to a minimum output of 25% of capacity during normal operation.

In Emergency, the generating units shall be capable of being operated as follows:

- o Engine preparation and start up to synchronous speed : 6 minutes/unit
- o Synchronizing and loading to full load under normal conditions, ramp increase not greater than : 5 minutes to 90% load; 30 minutes from 90% to 100% load

The Power Station shall operate at rates up to the maximum continuous rating ("MCR") plus 10% in cases of Emergency, provided, that any operation above MCR shall be limited to no more than one (1) hour in twelve (12) and three hundred (300) hours in any Contract Year.

**6. Operation Mode**

The Power Station shall be continuously utilized as a baseload plant and be expected to operate except during scheduled maintenance. The Power Station however, is expected to operate at any other time as may be called upon by

GPA during Emergency and/or abnormal system conditions (subject to safety of equipment and personnel) with adequate notice having been given by GPA and would be manned 24 hours a day.

**7. Variation of Power Load**

At any given load, it is estimated that the allowable load change per unit should be not more than 7 MW per minute.

**8. Emergency Starts**

It is estimated that 10 minutes notice should be given for an emergency start during which the loading rates should be restricted to those shown in Section 5.

**9. Heat Rates**

The Net Heat Rate of the Power Station following completion shall not be greater than 7,720 BTU/kWh HHV reckoned at full load condition (maximum continuous rating "MCR") in accordance with the performance tests described in the Fourteenth Schedule. The Power Station will be tested to demonstrate the Net Heat Rate.

**B. Operating Procedures**

1. **DISPATCH PROCEDURE.** Owner shall control and operate the Power Station consistent with GPA's systems dispatch requirements within the limitations of the manufacturer's recommendations, good operation and maintenance practices.
2. **ENGINEERING STANDARDS.** The Power Station including, but not limited to, the protective apparatus shall be operated and maintained in accordance with good engineering practices in respect of synchronizing, voltage and reactive power control.
3. **PROTECTIVE DEVICES.** The Power Station shall be operated with all of its protective apparatus in service whenever the facility is connected to or is operated in parallel with the GPA grid. Any deviation for brief period of emergency or maintenance shall only be by mutual agreement.
4. **INTEGRITY LOSS.** If, at any time, GPA has reason to doubt the integrity of any Owner protective apparatus and suspects that such loss of integrity could jeopardize the GPA electric system, Owner shall

demonstrate, to GPA's reasonable satisfaction, the correct calibration and operation of the equipment in question.

5. **TESTING OF PROTECTIVE DEVICES.** Owner shall test all protective devices with qualified personnel at intervals not to exceed one (1) year.
6. **NOTICE OF TESTS.** Owner shall notify GPA at least seven (7) calendar days prior to: (1) the initial parallel operation of each Owner generator and (2) testing of all protective apparatus. GPA shall have the right to have a representative present at such times.
7. **SERVICE COMMITMENT.** At GPA's request, Owner shall make all reasonable efforts to deliver power during periods of Emergency subject at all times to the provisions of this Second Schedule.
8. **MAINTENANCE DURING EMERGENCY.** In the event that a Scheduled Outage or other outage coincides with an Emergency, Owner shall make all reasonable efforts to reschedule the Scheduled Outage or if such outage is in progress, to restore the Power Station to operation as soon as reasonably practical.
9. **DAILY OPERATING REPORT FOR RECORD PURPOSES.** Owner shall keep GPA's Power Management Center informed as to the daily operating schedule and generation capability of its Power Station, including without limitation to, any Forced Outages as further provided in the Sixth Schedule.
10. **OPERATING AND MAINTENANCE RECORDS.** Owner shall maintain the operating and maintenance records for each generating unit at Owner's Power Station for a period of at least five (5) years with records of: real and reactive power production, changes in operating status, outages, protective apparatus operations and any unusual conditions found during inspections. Changes in the setting of protective apparatus shall also be logged. In addition, Owner shall maintain records applicable to the Power Station, including the electrical characteristics of the generator and settings or adjustment of the generator control equipment and protective devices. Such information shall be made available to GPA upon request.

THIRD SCHEDULE

MILESTONE SCHEDULE

<u>MILESTONE EVENT</u>	<u>DATE</u>
1. Execution of Agreement	October 1,1996
2. Sublease Executed	December 1, 1996
3. Local permits, licenses, and approvals obtained	April 1, 1997
4. PSD Permit obtained	June 1, 1997
5. Mobilization	July 1, 1997
6. Utilities (electricity, water and telephone) for construction available	August 1,1997
7. Completion of Transmission Line and interconnection to GPA grid	July 1,1998
8. Fuel for commissioning/startup of Power Station available to Owner	August 1, 1998
9. Target Completion Date	December 31, 1998

FOURTH SCHEDULE

SPECIFICATIONS OF FUEL SUPPLY AND  
START UP ELECTRICITY

FUEL SUPPLY

SPECIFICATIONS

The specifications for the Fuel Supply will be as follows:

Residual Fuel Oil No. 6

Density @ 15°C	Max: 0.9855
Viscosity@ 50 degrees C	Max: 1,500 SSU
Flash Point PM °C(°F)	65.5(150) Min.
Pour Point, Upper, °F	70 Max.
Carbon Residue	15% Max. weight
Ash	0.15% Max. weight
Water & Sediments	1.0% Max. weight
Sulfur (High Sulfur Fuel)	2.00 weight
Sulfur (Low Sulfur Fuel)	1.19 - % weight
Vanadium	80 ppm (Max)
Alumina & Silica	80 ppm (Max)
Higher Heating Value	18,814 BTU/lb.
Nitrogen	0.30 weight



No. 2 Distillate Fuel Oil

Specify Gravity @, 60°F	-	0.8602 Minimum
Viscosity SSU @ 100°F	-	35 Minimum
Cloud Point, °F	-	68 Maximum
Sulphur (wt %)	-	0.5% Maximum
Bottom Sediment & Water	-	0.05% Maximum
Ash	-	0.005% weight, Maximum
Flash Point, PM, °F	-	140 Minimum
Carbon Residue (10% Bottom)	-	0.2
Pour Point, °F	-	50 Maximum
HHV Calorific Value (Average)	-	19,550 BTU/LB

SUPPLY ARRANGEMENTS

<p>Delivery</p>	<p>GPA and Owner will liaise to prepare weekly fuel schedules showing anticipated times and quantities of fuel to be utilized by the Power Station and GPA shall be responsible for ensuring the availability of fuel supplies, for the payment therefor and for all arrangements with the suppliers.</p>
<p>Fuel Oil Storage and Tank Farm</p>	<p>Fuel oil storage will be provided by Owner in tanks of sufficient capacity for at least six (6) days consumption. The water shall be drained off at least weekly.</p> <p>The fuel tanks are to be provided with floating suction and will be calibrated in an approved manner. The tank farm shall be provided with appropriate fire fighting facilities.</p>
<p>Testing</p>	<p>Upon each delivery of fuel oil to and, if so required by Owner, from time to time thereafter, a suitable sample will be taken and analyzed by Owner to ensure that it meets the specifications as shown above. The Power Station laboratory shall be used for such analysis with a third party laboratory used in the event fuel is rejected and the initial analysis is disputed, such third party laboratory to be jointly chosen by the parties. The costs of any third party analysis shall be borne by GPA.</p>
<p>Metering</p>	<p>Meters will be provided by Owner to meter the fuel delivered into the tanks. Owner will provide a fuel oil meter with temperature compensation for measuring the delivery of fuel oil from the tanks to the engines. Meters shall be tested every six months at GPA's cost by a third party agreed between Owner and GPA.</p>

Variation in rate delivery	Owner and GPA will liaise in estimating the fuel required to comply with GPA's annual, monthly and weekly systems operating plans.
Fuel Management	The parties will enter into a fuel management agreement pursuant to which, for agreed fees, Owner will undertake the day to day routine maintenance and cleaning of the tanks provided hereunder and any repairs and/or replacements.
Security	Owner shall be responsible for all security and safety arrangements in respect of the fuel in the Site tanks.
Removal and Disposal of Water and Sludge in Fuel	Guaranteed engine performance shall be based on clean fuel without NO <sub>x</sub> control. GPA and Owner acknowledge that the fuel will from time to time contain varying amounts of water and heavy sludge ("Contaminants"). Owner will remove the Contaminants from the fuel prior to feeding the fuel to the engines. GPA shall, at its sole risk and expense, remove from the waste fuel storage tank at the Site and dispose of all Contaminants at such times and in such amounts as necessary to prevent Owner from exceeding the storage capacity of the waste fuel storage tank. GPA shall also accept for removal and disposal in accordance with the provisions hereof all waste lube oil produced by the Power Station.
Insurance	Owner shall be responsible for effecting insurance acceptable to GPA in respect of the Site tanks and fuel stored therein and GPA shall be named therein as co-insured.

START UP ELECTRICITY

SPECIFICATIONS

Construction and Start Up  
Electricity

Electricity for construction, commissioning, testing and start-up will be supplied by GPA to the Site on a continuous, reliable basis. Electricity supplied for construction, commissioning and testing shall be provided at a voltage lower than 115 kV to be mutually agreed between GPA and Owner. Electricity supplied following the Completion Date shall be provided at 115 kV.

Quantity of Fuel, Electricity and Water

Pursuant to Clauses 2.6, 2.9, 2.10 and 3.6, GPA shall ensure that there is provided to Owner at the Site fuel, electricity and water in the following quantities:

Residual Fuel No. 6  
when Power Station  
at full load

Not to exceed 4,900 gallons per  
hour

Electricity for  
construction  
activities

Not to exceed 2.4 MW supplied on a  
reliable, continuous basis

Start-up electricity for  
commissioning, testing and  
operation of the Power  
Station

Not to exceed 3.2 MW supplied as  
necessary for each start-up of the  
Power Station

Water as required for the  
operation of the Power  
Station

Not to exceed 130 gallons per minute

Sanitary and Sewer  
connection

For construction and operation

FIFTH SCHEDULE

TRANSMISSION LINE SPECIFICATIONS

Location

From the outgoing switching facility within the Site boundary at Piti power station in Piti, Guam.

Specifications

The Transmission Line at 115 kV shall be capable of providing sufficient electricity for testing, commissioning and starting the Power Station and shall be capable of taking the maximum output of the Power Station.

SIXTH SCHEDULE

ELECTRICITY DELIVERY PROCEDURES

1. Definitions

"Scheduled Outage" means the scheduled removal of the generating capability of the Power Station to undertake normal inspections, maintenance, repair, replacement and overhaul of the Power Station or a portion thereof pursuant to the schedule approved pursuant to Clause 8.2, as such schedule may be revised from time to time pursuant thereto.

"Forced Outage" is defined as the inability due to the fault of Owner to meet Contracted Capacity requested by GPA provided that any failure to meet the Contracted Capacity resulting from the declared unavailability of any unit of the Power Station due to a Scheduled Outage shall not be Forced Outage.

"Downtime" means the sum of the number of hours per each Contract Year allowed to Owner by GPA for (i) Scheduled Outages and (ii) Forced Outages, not to exceed in the aggregate 876 hours per Contract Year, provided that in any year during which a Major Overhaul is performed on the Power Station the number of allowable hours shall be increased to 1100 hours in the aggregate, plus, in addition to the foregoing hours allowable each Contract Year, any other hours that the Contracted Capacity is unavailable as a consequence of GPA's failure to perform any of its obligations under this Agreement, unavailability of the Transmission Line or the GPA grid or due to Force Majeure. Downtime shall be increased each Contract Year following the first Contract Year by the number of Carried Forward Hours in calculated for the previous Contract Years.

"Carry Forward Hours" means the carried forward hours from one Contract Year to the next Contract Year equal to the number of hours of unused Downtime such that the allowed Downtime for the subsequent Contract Year is increased by the amount of the unused hours of Downtime; provided that the maximum number of carried forward hours allowable in any Contract Year shall not exceed 1,000 hours.

2. Measurement of Power Generated

Measurement of power generated transferred to GPA shall be made at the high voltage side of the main power transformer(s) in accordance with the provisions of the Seventh Schedule.

3. Notice in change of output

Specific procedures for notifications of power requirements shall be agreed between Owner and GPA prior to the Completion Date. Subject to such procedures, the outputs of the diesel engine generators shall be as required by the system controller from time to time, provided that changes in output requested by the system controller remain within the Specifications and the Operating Parameters as set forth in the First and Second Schedules.

4. Notice of Scheduled Outages

GPA shall prepare annual, monthly and weekly systems operating plans and in so doing shall coordinate with Owner to agree on the Scheduled Outages.

GPA shall grant Owner sufficient Scheduled Outage hours to undertake all regular inspection and maintenance of each diesel engine generator in accordance with the manufacturer's recommendations, taking full account of hours run, number of starts and duration of running for each start.

Owner will plan with GPA to ensure that as far as practicable, Scheduled Outages are undertaken at times to cause minimum disruption to the GPA power system.

5. Notice of Required Electricity

Whilst the annual, monthly and weekly system operating plans will be prepared by GPA in consultation with Owner, it is agreed that the weekly plan for the following seven days will be the control plan and will be that plan referred to as the "normal operation plan."

6. Normal Operations

Normal operations of the engine-generators are as defined below:

- (1) Operating in accordance with the weekly normal operation plan as defined in Section 5 above as agreed in writing between GPA and Owner. In addition, Owner shall declare, no later than 5:00 p.m. each day, the Availability Schedule for the next day beginning at 12:00 midnight and ending at 12:00 midnight the following day.

The Availability Schedule will declare the generation capacity (kW) that will be available to GPA each day from the Power Station on an hour by hour basis for the subject twenty-four (24) period, including notification of any operational problems of the Power Station. GPA may request that Owner deliver capacity (dispatch the Power Station) up to the declared capacity set forth in

the Availability Schedule subject to the Specifications and the Operating Parameters, but shall not request any capacity in excess of Owner's capacity declaration. Any declaration in the Availability Schedule that is less than the Contracted Capacity for a given hour or longer period shall be considered Downtime. If any such period set forth in an Availability Schedule restricts GPA's access to the Contracted Capacity by some amount less than the total capacity of the Power Station, the amount of Downtime accrued will be a pro rata portion of an hour (declared capacity/Contracted Capacity) for each such hour or longer period. Owner shall issue a revised Availability Schedule at any time circumstances change (i.e. a Forced Outage occurs) that increases or decreases the available capacity for dispatch.

- (2) Operating with fuel within the specifications set out in the Fourth Schedule.
- (3) Operating frequencies of the system to be within the limits of the Operating Parameters.
- (4) Operating at a system voltage of 115 kV plus or minus 5%.
- (5) Start-up, synchronizing and loading to be within the limits of the Operating Parameters.
- (6) Full access to the Site at all times for materials and personnel.
- (7) The Power Station shall be operated and dispatched as a baseload plant.
- (8) GPA may request generation (dispatch) from the available capacity of the Power Station at any rate between the minimum operating rate on a given engine (25% of MCR) and the declared available capacity in the Availability Schedule provided by Owner then in effect, the Owner shall be deemed to have fully complied with the dispatch request if the delivered generation is within  $\pm 3\%$  of the requested generation.



SEVENTH SCHEDULE

MEASUREMENT AND RECORDING OF ELECTRICITY

1. The meter location to record the kW, kWh and kVAR delivered to GPA shall be at the high voltage side of the main step up transformers.
2. The quantity of power and energy delivered to GPA shall be given by the in/out meters referenced in Section 1 of this Schedule.
3. In order to verify the quantity of electricity delivered by Owner to GPA in each Month, GPA and Owner shall at noon or at such other time agreed between GPA and Owner on the twenty fifth day of each Month print a report (generated by the process computer in the Power Station) detailing the daily delivery of electricity from the Power Station by Owner provided always that if GPA shall not be present at the Power Station at the agreed time, the above mentioned report shall be printed by Owner and shall be binding on GPA for all purposes under this Agreement.
4. Owner shall supply and install and GPA shall maintain as part of the interconnection facilities, the meter and related equipment to be utilized for the measurement of electric power (kW), energy (kWh) and reactive power (kVA) in determining GPA's payments to Owner pursuant to this Agreement.
5. For the purpose of monitoring the Power Station's operation, GPA shall have the right to require, at Owner's expense, the installation of metering devices at the generation side which will be specified to Owner prior to the Effective Date.
6. The meter, installed in pursuance to this Agreement, shall be tested by GPA at its own expense every six months. Other tests may be conducted at any reasonable time upon request by either party, at the requesting party's expense. If Owner makes such request, Owner shall reimburse said expense to GPA within thirty (30) days after presentation of a bill therefor. GPA's meter test result shall be deemed final and conclusive; provided, that Owner reserves the right to employ, at its own expense, a qualified third party to check the calibration of the meter. GPA shall have the right to witness any such third party testing. If the third party test indicates a change in the meter calibration is required, the meter shall be recalibrated by such third party unless GPA disputes the results of the third party test. In the event GPA disputes the results of the third party calibration test, the parties shall resolve such dispute pursuant to the provisions of Clause 22.
7. The meter and metering transformers shall be in accordance with GPA's specifications.

8. Metering equipment found to be inaccurate shall be repaired, adjusted, or replaced by GPA at Owner's expense such that the inaccuracy of said equipment shall be as near as possible to zero. If metering equipment inaccuracy exceeds plus or minus one percent (1%), the correct amount of energy delivered during the period of said inaccuracy shall be estimated by GPA and agreed by the parties. Adjustment for meter inaccuracy shall cover only the current Month and the Month immediately preceding it.

EIGHTH SCHEDULE

FEES FOR POWER AND ENERGY

1. **OBLIGATIONS OF PARTIES.** Owner hereby agrees to convert fuel supplied by GPA into electricity and GPA hereby agrees to take at the high voltage side of the step-up transformer, the electric power and energy delivered by Owner to GPA until the end of the Co-operation Period.
2. **CAPACITY AND FIXED O&M FEE PROVISION.** Owner shall provide and GPA shall pay for the electric power output capacity of the Power Station as provided in Section 4.1 of this Schedule in respect of the amount of Contracted Capacity which, in respect of each Contract Year, shall be the actual net Kilowatt (kW) capability of the Power Station nominated by Owner for such year provided that:
  - a. such nominated amount may not exceed 110% of the Nominal Capacity unless GPA so agrees; and
  - b. if, at the beginning of any Contract Year Owner nominates an amount less than the Nominal Capacity it may subsequently nominate an increased amount in which case such increased amount shall be the Contracted Capacity for the remainder of such Contract Year.

At the commencement of each Contract Year of the Co-operation Period, if so requested by GPA, Owner shall demonstrate its ability to provide GPA the Contracted Capacity within fourteen (14) days of any nomination by Owner.

If, on the Completion Date or any anniversary thereof, Owner fails to notify GPA of the nominated amount of Contracted Capacity for the following Contract Year, the Contracted Capacity for such Contract Year shall be the Nominal Capacity.

Owner shall provide for the fixed operation and maintenance of the Power Station and GPA shall pay therefor the fees as provided in Section 4.2 of this Schedule. The Fixed O&M Fees are based on the Contracted Capacity.

3. **DELIVERED ENERGY.** Owner shall convert fuel supplied by GPA into electricity and deliver it to GPA, and GPA shall take such electricity from Owner as requested by the GPA Power Management Center. The energy delivered shall be paid for by GPA pursuant to the terms and conditions as provided in Sections 4.3 of this Schedule.

GPA shall make a supplemental payment to Owner for certain costs incurred by Owner and associated with any start-up of the Power Station or any unit therein that is a consequence of the acts or omissions of GPA, including without limitation dispatch

instructions. Owner shall invoice GPA for those costs associated with start-up of the Power Station or any unit therein as provided in Section 4.4 of this Schedule.

#### 4. TERMS OF PAYMENT

##### 4.1 CAPACITY FEES. Capacity Fees shall be computed on the basis of the following formula:

$$A = \{ (CCR * CC * AF) - ((y * 1.05) (CCR) (NC - CC)) \}$$

where:

A = Total Capacity Payment in dollars for each Month.

CCR = Contract Capacity Rate equal to \$16.578/kW/month as such rate may be adjusted below due to a delay of the Effective Date; provided, however if the Guam Economic Development Authority ("GEDA") fails to grant Owner, on or before June 1, 1997, a qualifying certificate entitling Owner to a rebate of income taxes payable by Owner equal to 75% of such taxes for the full Co-operation Period (the "Qualified Amount"), the Contract Capacity Rate shall be increased as follows: (i) if, on or prior to June 1, 1997 GEDA grants Owner a qualifying certificate entitling Owner to a rebate of income taxes payable by Owner equal to or less than 37.5% of such taxes for a period equal to or less than the full Co-operation Period or fails to grant Owner any qualifying certificate entitling Owner to an income tax rebate (the "Unqualified Amount"), the Contract Capacity Rate shall be \$17.369/kW/month or (ii) if, on or prior to June 1, 1997, GEDA grants Owner a qualifying certificate entitling Owner to a rebate of income taxes payable by Owner, the economic value of which is less than the Qualified Amount but greater than the Unqualified Amount (based on the value of the cash flow of the relevant tax savings discounted to net present value as of the date of closing of the financing of construction of the Power Station at a 14% discount rate) (the "Interim Amount"), a revised Contract Capacity Rate shall be determined equal to an amount greater than \$16.578/kW/month but less than \$17.369/kW/month. The revised Contract Capacity Rate shall be based on difference between the expected value to Owner of the tax rebate based on the Qualified Amount and the expected value to Owner of the tax rebate based on the Interim Amount, determined by the economic model developed by Owner to calculate the economic performance of the Project over the course of the Co-operation Period as such model is approved by Owner's lenders providing financing for the Project. It is agreed by the parties that Ernst & Young LLP shall determine the revised Contract Capacity Rate

employing the aforementioned base case cash flow projections. GPA acknowledges that Owner's base case cash flow projections (including Owner's return on investment) are highly sensitive information subject to the utmost confidentiality. Accordingly, the determination of the revised Contract Capacity Rate arrived at by Ernst & Young LLP shall be accepted by the parties without review absent manifest error and Owner's base case cash flow projections shall not be required to be disclosed to GPA under any circumstances (an example adjustment calculation for CCR is provided in the Fifteenth Schedule Section VI).

NC = Nominal Capacity, in kW = 79,600 kW.

AF = Availability Factor as derived using the following formula as calculated for the previous Contract Year. If Downtime hours do not exceed the number of hours allowable pursuant to the definition of "Downtime" in the Sixth Schedule as such Downtime may be increased by Carry Forward Hours permitted pursuant to the Sixth Schedule from previous Contract Years, if any, or if the following formula results in AF being greater than 1, then AF shall be 1.

$$AF = \frac{\text{annual actual net production}}{\text{TMEG}}$$

where TMEG = Theoretical Maximum Energy Generation being the Contracted Capacity of the Power Station multiplied by the hours in the relevant Contract Year, less any adjustments made for Downtime, dispatch order, Force Majeure and for the Power Station commencing generation after a period of non-generation.

CC = Contracted Capacity for the year, in kW.

y = variable.

The variable y is defined as follows:

if  $0.90 \text{ NC} \leq \text{CC}$ , then  $y = 0$

if  $\text{CC} < 0.90 \text{ NC}$ , then  $y = 1$

Provided that if Owner is unable to make available the Contracted Capacity for reasons which would have been Forced Outage and such failure continues for more than thirty (30) days, thereafter the Capacity Fee shall be reduced by reference to the amount of capacity that Owner is so unable to make available

and the Co-operation Period shall be extended by a period equal to the period of which such reduction is applicable.

Notwithstanding anything to the contrary contained herein, the Capacity Payment ("A") as calculated under this Section 4.1 shall not be less than zero.

In the event that the Effective Date is delayed beyond December 1, 1997 the base value CCR set forth in this Section 4.1 shall be adjusted in accordance with the following formula:

$$CCR_{ADJ} = CCR * USGDP_{ED} / USGDP_B$$

where:

$CCR_{ADJ}$  = Adjusted Contract Capacity Rate.

$CCR$  = As previously defined in this Section 4.1.

$USGDP_{ED}$  = The United States Gross Domestic Product Implicit Price Deflator reported for the quarter in which the Effective Date occurs.

$USGDP_B$  = The United States Gross Domestic Product Implicit Price Deflator for reported for the most recent quarter prior to November, 1997.

Once calculated to take into account the achievement of the Effective Date following December 1, 1997, the base value of CCR as adjusted shall remain constant for the remainder of the term of this Agreement.

Capacity Fees payable pursuant to Clause 11.4 shall be payable each month or portion thereof on a pro rata basis from the Completion Date until the Target Completion Date.

4.2 **FIXED O&M FEES.** Fixed O&M Fees shall be computed on the basis of the following formula:

where:

FOM = Fixed O&M Fees in dollars for each Month.

FOM =  $[(FOMR * CC * AF) - (y * 1.05) (FOMR) (NC - CC)] (PI)$

FOMR = \$6.372/kW/month (1996 dollars).

- PI = Ratio of the United States Gross Domestic Product Implicit Price Deflator as reported by the United States Commerce Department for the current quarter to the United States Gross Domestic Product Implicit Price Deflator as reported by the United States the most recent quarter prior to Commerce Department for September, 1996.
- AF = Availability Factor defined in Section 4.1 above.
- CC = Contracted Capacity for the year in kW.
- NC = Nominal Capacity in kW.
- y = As defined in Section 4.1 above.

The Fixed O&M Rate shall be adjusted on the Completion Date and on the first day of every quarter thereafter (each an "Adjustment Date") and the Fixed O&M Rate as adjusted shall be the Fixed O&M Rate payable pursuant to Clause 11.1 for the period from an Adjustment Date until the succeeding Adjustment Date. In the event any index used to arrive at the composite index ("PI") ceases to exist or to be published for which a substitute index is not designated, such terminated index will be replaced by an index nominated by Owner after consultation with GPA.

Notwithstanding anything to the contrary contained herein, the Fixed O&M Fees ("FOM") as calculated under this Section 4.2 shall not be less than zero.

Fixed O&M Fees payable pursuant to Clause 11.3 shall be payable each month or portion thereof on a pro rata basis from the Completion Date until the Target Completion Date.

4.3 VARIABLE O&M FEES. Variable O&M Fees shall be computed on the basis of the following formula:

where:

- VOM = Variable O&M Fees in dollars for each Month.
- VOM =  $E * VOMR * PI$
- E = Actual energy kWh delivered to GPA in each Month, as measured pursuant to the Seventh Schedule.
- VOMR = \$ 0.0024/kWh (1996 dollars).
- PI = As defined in Section 4.2 above.

The Variable O&M Rate shall be adjusted on the Completion Date and on the first day of every quarter thereafter (each an "Adjustment Date") and the Variable O&M Rate as adjusted shall be the Variable O&M Rate payable pursuant to Clause 11.1 for the period from an Adjustment Date until the succeeding Adjustment Date. In the event any index used to arrive at the composite index ("PI") ceases to exist or to be published for which a substitute index is not designated, such terminated index will be replaced by an index nominated by Owner after consultation with GPA.

Variable O&M Fees payable pursuant to Clause 11.3 shall be payable each month or portion thereof on a pro rata basis from the Completion Date until the Target Completion Date.

4.4 **START UP CHARGES.** A Start Up Charge equal to \$3,752 per start per engine shall apply for each start which exceeds fifteen (15) starts in the aggregate each Contract Year that is a consequence of the acts or omissions of GPA, including without limitation dispatch instructions.

ALL SUMS PAYABLE TO OWNER SHALL BE PAYABLE IN ACCORDANCE WITH CLAUSE 12.2 OF THIS AGREEMENT.

4.5 **HEAT RATE BONUS/PENALTY FACTOR**

GPA's objective is to assure the Project is operated economically with respect to fuel consumption, which has a direct impact on the cost of energy supplied to GPA. Therefore, GPA shall provide an incentive to Owner to assure GPA's objectives are met.

GPA and Owner agree to evaluate fuel consumption efficiency of the Power Station in terms of Net Heat Rate. Such fuel efficiency shall be evaluated by comparing the Contractual Heat Rate to the Adjusted Actual Heat Rate.

For purposes of this Section 4.5:

- Net Heat Rate shall mean the measure of the thermal efficiency of the Power Station expressed in British Thermal Units (HHV) (BTU) per net kilowatt hour; for the purpose of the Net Heat Rate tests, kilowatts shall be measured at the high side of the main step-up transformer; fuel consumed shall be the amount of fuel actually delivered to the engines (clean fuel to the engines) consumed in the period as measured by day tank meters;
- Contractual Net Heat Rate shall be 7,720 BTU/kWh (HHV); this heat rate assumes that the HHV value of the fuel to be 18,814 BTU/lb (HHV);



Adjusted Actual Net Heat Rate shall be the actual Net Heat Rate demonstrated by Owner pursuant to the Annual Performance Tests conducted pursuant to the Fourteenth Schedule.

While Owner is operating the Power Station during the Co-operation Period:

(i) if the Adjusted Actual Net Heat Rate of the Power Station is greater than 7,720 BTU/kWh HHV, then Owner shall pay GPA the additional fuel cost associated with such higher Net Heat Rate (i.e., the cost of the additional fuel consumed as a result of the difference between the Adjusted Actual Net Heat Rate and 7,720 BTU/kWh HHV) calculated, subject to retesting, on an annual basis commencing with the first anniversary of the Completion Date;

(ii) if the Adjusted Actual Net Heat Rate of the Power Station is less than 7,720 BTU/kWh HHV, then GPA shall pay to Owner one-half of the equivalent savings in fuel cost associated with such lower Net Heat Rate (i.e., the cost of the fuel saved as a result of the difference between the Adjusted Actual Net Heat Rate and 7,720 BTU/kWh HHV) calculated on an annual basis commencing with the first anniversary of the Completion Date.

In determining any payment by Owner to GPA, or GPA to Owner, which is associated with the Adjusted Actual Net Heat Rate applicable for each Contract Year, the parties shall determine how much fuel should have been consumed for each such Contract Year, assuming that the energy (kWh) produced by the Power Station during the relevant Contract Year was produced at the Contract Capacity Rate and at the Contractual Net Heat Rate.

Within sixty (60) days after the end of each Contract Year (starting with the end of the second Contract Year) GPA shall provide to Owner documentation with respect to the average cost of fuel for the previous Contract Year. Within thirty (30) days of receipt of such information, Owner shall determine whether it is entitled to a heat rate bonus or subject to a heat rate penalty as provided for above. Owner shall reflect such heat rate bonus or heat rate penalty as a credit or debit, respectively, in the next invoice delivered to GPA by Owner pursuant to Clause 11.1.

**NET HEAT RATE PENALTY FORMULA.** The Net Heat Rate penalty shall be computed on the basis of the following formula:

$$P = E * FC * PHRC * 1/1,000,000$$

where:

- P = Net Heat Rate penalty due to GPA from Owner.
- E = Energy actually delivered to GPA during the Contract Year as measured in kWh.
- FC = Average fuel cost in dollars per million BTU for the for the subject Contract Year as documented by GPA.
- PHRC = Adjusted Actual Heat Rate minus the Contractual Heat Rate. For purposes of calculating the Net Heat Rate penalty, PHRC shall not be less than zero.

**NET HEAT RATE BONUS FORMULA.** The Net Heat Rate bonus shall be computed on the basis of the following formula:

$$B = E * FC * BHRC * 1/1,000,000 * 1/2$$

where:

- B = Net Heat Rate bonus due to Owner from GPA.
- E = Energy actually delivered to GPA during the Contract Year as measured in kWh.
- FC = Average fuel cost in dollars per million BTU for the for the subject Contract Year as documented by GPA.
- BHRC = Contractual Heat Rate minus the Adjusted Actual Heat Rate. For purposes of calculating the Net Heat Rate bonus, BHRC shall not be less than zero.

#### 5. EARLY COMPLETION DISCOUNTED ELECTRICITY PAYMENTS

In the event a portion of the engine generator capacity of the Power Station is ready for commercial operation prior to completion of the total Power Station, GPA shall accept and pay for such capacity in accordance with the following formula:

$$D = (CCR + FOMR) * DC * 0.75 * Days/30$$

where:

D = Discounted electricity payments.

DC = Capacity demonstrated in accordance with the early completion test set forth below.

CCR = As previously defined in Section 4.1.

FOMR = Fixed O&M Rate equal to \$6.372/kW/month.

Days = Number of days prior to the Completion Date for which discounted electricity payments are due.

If Owner declares a partial completion of the Power Station prior to final completion of same, Owner shall demonstrate the capacity of the engine generator set(s) that are complete and ready for service by operating the unit(s) at full load for a minimum of two (2) hours. The demonstrated capacity shall be the average of the output over such two (2) hour period as measured by the meter at the high voltage side of the main step up transformer.

If, due to the fault of Owner, Owner fails to make the capacity available to deliver energy to GPA at least 80% of the hours in any month or portion thereof during which discounted electricity payments are due and payable to Owner by GPA, Owner shall not be entitled to the discounted electricity payments and GPA shall have no obligation to make any such payments to Owner. The foregoing forfeiture of discounted electricity payments shall be Owner's sole liability for the failure to deliver energy as aforesaid.

NINTH SCHEDULE

DOCUMENTARY REQUIREMENTS FOR THE EFFECTIVE DATE

1. National and local approvals as may be necessary to proceed with construction of the Project including without limitation the PSD Permit and the NPDES Permit.
2. Owner has obtained the approval by all relevant Government agencies for the immediate importation into Guam of all materials and equipment, including the engine-generator sets, for the Power Station, and the payment therefor.
3. Owner has obtained an opinion of Guam Public Utilities Commission confirming that the operation by Owner of the Power Station will not constitute a public utility so as to require a franchise, certificate of public convenience or other similar license, if required.
4. All approvals required for use of the Site for the Project.
5. Owner has obtained a ruling from the Department of Revenue and Taxation of Guam that the materials and commodities incorporated into the Power Station is not subject to use tax Public Law No. 21-48.
6. Owner has obtained issuance of a Notice of Proposed Construction for the Project by the Federal Aviation Administration if required.
7. Owner has obtained issuance of a 401 Water Quality Certification for the Project by the Guam Environmental Protection Agency.
8. Owner has obtained issuance of an Air Permit to Construct for the Project by the Guam Environmental Protection Agency.
9. Owner has obtained issuance of a Building Permit for the Project by the Guam Department of Public Works.
10. Owner has obtained issuance of a Clearing and Grading Permit for the Project by the Guam Environmental Protection Agency if required.
11. Owner has obtained issuance of an Erosion Control Plan for the Project by the Guam Environmental Protection Agency.
12. Owner has obtained approval of the Environmental Impact Assessment for the Project by the Guam Environmental Protection Agency.

13. Owner has obtained approval of the Environmental Protection Plan for the Project by the Guam Environmental Protection Agency.
14. Owner has obtained approval of the Federal Consistency Review for the Project by the Guam Coastal Zone Management if required.
15. Owner has obtained approval of the Water use and Wastewater disposal for the Project by the Public Utility Agency of Guam.

TENTH SCHEDULE

INSURANCE

1. **INSURANCE DURING CONSTRUCTION.** From the Effective Date until the commissioning of the Power Station, Owner shall, at its own expense, obtain and maintain in force the following insurance:
  - a. A Marine insurance in respect of plant and equipment to be imported into Guam;
  - b. All Risks "Builder's Risk Insurance" to cover the entire works from any and all kinds of damages arising out of any cause whatsoever;
  - c. "Third Party Liability Insurance" to cover injury to or death of persons (including those of GPA) or damages to property caused by the works or by Owner's vehicles, tools and/or equipment or personnel including its subcontractors; and
  - d. "Workmen's Compensation Insurance" as required under the Social Security Law.
2. **INSURANCE DURING COOPERATION PERIOD.** During the Cooperation Period, Owner shall at its own expense keep the Power Station insured against accidental damage from all normal risks and to a level normal for prudent operators of facilities similar to the Power Station. In addition, Owner shall secure adequate insurance cover for its employees as may be required by law.
3. The insurance effected shall be no less favorable to the insured in terms of risks covered than that normally effected by GPA in respect of its own similar operations. The insurance effected pursuant to this Tenth Schedule shall be obtained and maintained from financially sound and reputable insurers and such insurance shall generally contain provisions and deductibles which are reasonably standard in the insurance market with respect to power generating facilities of similar size and location. The scope of coverage of such insurance shall be subject to standard exclusions, exceptions and sub-limits and shall be economically reasonable.

**ELEVENTH SCHEDULE**

**RESERVED**

TWELFTH SCHEDULE  
FORM OF LETTER OF CREDIT

[Letterhead of issuing bank]

IRREVOCABLE STANDBY LETTER OF CREDIT

\*\*\*, 199\*\*\*

IRREVOCABLE STANDBY LETTER OF CREDIT NO.\*\*\*

[STATED AMOUNT: US\$\*\*\*]

To: Enron Development Piti Corp., as Beneficiary  
[insert address]

Attention: \_\_\_\_\_

Gentlemen:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. At the request and for the account of Guam Power Authority (the "Company") and pursuant to the Energy Conversion Agreement dated September 30, 1996 between you and the Company (as may be amended from time to time, the "Agreement"), we hereby open in your favor this Irrevocable Standby Letter of Credit, which may be drawn upon at the times and in the manner hereinafter provided with respect to the payment of fees outstanding under the Agreement. All drawings under this Irrevocable Standby Letter of Credit will be paid with our own funds. Capitalized terms used herein and not otherwise defined shall have the meaning given to such terms in the Agreement.
2. The amount available to be drawn hereunder shall be equal to US\$\_\_\_\_\_ (the "Stated Amount"), which as of the Completion Date, is equal to the sum of (i) Capacity Fees, plus (ii) Fixed O&M Fees plus (iii) Variable O&M Fees, in each case payable under the Agreement over a period of sixty days and based on the Contracted Capacity and assuming that the Power Station is operated at 71,640 kW each day for such sixty day period (as adjusted at the commencement of each Contract Year to reflect the then current Contracted Capacity, the "Sixty Day Amount").



3. Subject to the provisions hereof, demand for payment may be made by you under this Irrevocable Standby Letter of Credit at our address below at any time during our business hours on any Business Day (as hereinafter defined) by presenting to an officer of the Bank a written drawing certificate in the form of Annex I hereto (the "Drawing Certificate"). If such Drawing Certificate is received prior to 12:00 P.M. (Guam time) on a Business Day and conforms to the terms and conditions hereof, payment shall be made to you at the place designated in the drawing Certificate in U.S. dollars and in same day funds, by 2:00 P.M. (Guam time) on such Business Day. Drawing Certificates received after 12:00 P.M. (Guam time) on a Business Day shall be so honored by 10:00 A.M. (Guam time) on the Business Day following the date of such demand for payment, but in no event later than the Stated Expiry Date (as defined below). If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Irrevocable Standby Letter of Credit, we shall give you immediate notice that the demand for payment was not effected in accordance with the terms and conditions of this Irrevocable Standby Letter of Credit, stating the reasons therefor and that we are holding documents at your disposal or are returning the same to you. Upon being notified that the demand for payment was not effected in conformity with this Irrevocable Standby Letter of Credit, you may attempt to correct any such nonconforming demand for payment if, and to the extent that, you are entitled (without regard to the provisions of this sentence) and able to do so. As used herein the term "Business Day" means any day on which commercial banks or banking institutions in Guam are not required to remain closed.
4. This Irrevocable Standby Letter of Credit shall expire at our close of business at our address on the earlier to occur of the following dates: (i) \*\*\*, 20\*\*\* (the "Stated Expiry Date"), (ii) the date which is \*\*\* days after the Transfer Date has occurred, (iii) the date on which the Stated Amount has been drawn in full or (iv) the Company has procured and delivered to you a replacement Irrevocable Standby Letter of Credit equal to the then current Sixty Day Amount. This Irrevocable Standby Letter of Credit shall be promptly surrendered to us by you upon any expiration pursuant to the preceding sentence. We shall accept without further inquiry your certification that the Transfer Date has not occurred, notwithstanding the representations of any other party.
5. All documents presented to us in connection with any demand for payment hereunder, as well as all notices and other communications to us in respect of this Irrevocable Standby Letter of Credit, shall be in writing and addressed and presented to us at [insert address, Attention: \_\_\_\_\_ ] (or any other office which may be designated by us by written notice delivered to you) and shall make specific reference to this Irrevocable Standby Letter of Credit by number. Such documents, notices and other communications shall be personally delivered to us or transmitted by electronic transmission.

6. This Irrevocable Standby Letter of Credit is not assignable or transferable except in whole to an assignee of your interest in the Agreement or any banks or financial institutions which have provided funding for the Power Station. Transfer of all but not part of this Irrevocable Standby Letter of Credit to any such assignee shall be effected by presentation to us of this Irrevocable Standby Letter of Credit accompanied by a written certificate substantially in the form of Annex II hereto. Upon such presentation, we shall forthwith issue an irrevocable standby letter of credit in favor of such transferee in the form of this Irrevocable Standby Letter of Credit.
7. This Irrevocable Standby Letter of Credit sets forth in full the terms of our undertaking, and this undertaking shall not in any way be modified, amended or amplified by reference to any document, instrument or agreement referred to herein (except the Uniform Customs, hereinafter defined, and the Annexes hereto) or in which this Irrevocable Standby Letter of Credit is referred to or to which this Irrevocable Standby Letter or Credit relates, and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for the Uniform Customs and Annexes hereto.
8. This Irrevocable Standby Letter of Credit shall be governed by construed in accordance with the Uniform customs and Practices for Documentary Credits (1983 Revision), International Chamber of Commerce Publication No. 400 (the "Uniform Customs") and, to the extent not inconsistent therewith, the laws of the [State of New York].

Very truly yours,

[NAME OF ISSUING BANK]

By: \_\_\_\_\_

Title:

ANNEX I  
TO  
IRREVOCABLE STANDBY LETTER OF CREDIT

DRAWING CERTIFICATE

Date : \_\_\_\_\_  
[Name of Issuing Bank]  
[insert address]

Attention : \_\_\_\_\_

Re: Irrevocable Standby Letter of Credit No.  
(the "Standby Letter of Credit")

We refer to the Irrevocable Standby Letter of Credit No. \_\_\_\_\_ issued by you to us in connection with the Energy Conversion Agreement dated September 30, 1996 between Guam Power Authority and ourselves (the "Agreement"). Capitalized terms used herein and not otherwise defined shall have the meaning specified in the Standby Letter of Credit. We hereby certify to you, through our duly authorized officer, that:

1. We are hereby making a drawing under the Standby Letter of Credit in the amount of \$ \*.
2. The account to which the proceeds of this drawing shall be paid is \*\*.
3. The amount demanded hereby represents overdue fees payable under the Agreement which have not been paid within fifteen (15) days of the date so due under the Agreement.
4. This Certificate is presented on or prior to the date which is [ ] days after the Transfer Date.

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate on the \_\_\_\_ day of \_\_\_\_\_, 19 \_\_\_\_.

ENRON DEVELOPMENT PITI CORP.,  
as beneficiary

By: \_\_\_\_\_  
Name:  
Title:

ANNEX II  
TO  
IRREVOCABLE STANDBY LETTER OF CREDIT

FORM OF TRANSFER LETTER

Date : \_\_\_\_\_

[Name of Issuing Bank]  
[insert address]

Re: Irrevocable Standby Letter of  
Credit No. \_\_\_\_\_

Gentlemen:

For value received, the undersigned beneficiary hereby irrevocably instructs you to transfer to \_\_\_\_\_ (the "Transferee") all rights of the undersigned beneficiary under the above-captioned Irrevocable Standby Letter of Credit (the "Standby Letter of Credit") in its entirety.

By this transfer, all rights of the undersigned beneficiary in the Standby Letter of Credit are transferred to the Transferee and the Transferee shall hereafter have the sole rights as beneficiary thereof.

The original of the Standby Letter of Credit is returned herewith and we ask you to issue a new Standby Letter of Credit in favor of the Transferee containing the same terms and provisions as the Standby Letter of Credit and to forward the Standby Letter of Credit directly to the Transferee with your customary notice of transfer.

Very truly yours,

ENRON DEVELOPMENT PITI CORP.,  
as beneficiary

By: \_\_\_\_\_  
Name:  
Title:

THIRTEENTH SCHEDULE

FORM OF GPA LEGAL OPINION

FROM: General Counsel to GPA  
TO: ENRON DEVELOPMENT PITI CORP.

Dear Sirs,

I have acted on behalf of Guam Power Authority (GPA) in connection with an Energy Conversion Agreement (the "ECA") dated September 30, 1996 entered into between GPA and Enron Development Piti Corp. (the "Owner") and a Site Lease (the "Lease") dated \_\_\_\_\_, 1996 entered into between GPA and Owner (the ECA and the Lease hereinafter defined as the Project Agreements). I have examined executed copies of the Project Agreements and such other documents as I have considered necessary or desirable to examine in order that I may give this opinion. Capitalized terms used herein and not otherwise defined shall have the meanings given to such terms in the ECA.

I am of the opinion that:

- (i) GPA is a government agency validly existing under the laws of the Territory of Guam pursuant to \_\_\_\_\_;
- (ii) GPA has the corporate or other power to enter into the Project Agreements and to exercise its rights and perform its obligations thereunder, and execution of the Project Agreements on behalf of GPA by the person(s) who executed the Project Agreements was duly authorized;
- (iii) all acts, conditions and things required by the laws and constitution of the United States of America and the Territory of Guam to be done, fulfilled and performed in order (a) to enable GPA lawfully to enter into, exercise its rights under and perform the obligations expressed to be assumed by it in the Project Agreements, (b) to ensure that the obligations expressed to be assumed by it in the Project Agreements are valid and enforceable by appropriate proceedings and (c) to make the Project Agreements admissible in evidence in the Territory of Guam, have been done, fulfilled and performed in compliance with the laws and constitution of the United States of America and the Territory of Guam;
- (iv) the obligations of GPA under the Project Agreements are legal and valid obligations binding on GPA and enforceable in accordance with the terms of the Project Agreements;

- (v) GPA is not entitled under the terms of the Project Agreements to claim any immunity from suit, execution, attachment or other legal process in the United States of America or the Territory of Guam and such waiver is legal and binding on GPA and enforceable in accordance with the terms of the Project Agreements; and
- (vi) under the Constitution of the United States of America, it is recognized that no law impairing the obligation of contracts shall be passed and consequently the validity of the Project Agreements and the binding nature of the obligations of the parties thereunder are constitutionally safeguarded.

This opinion is confined to matters of law of the United States of America and the Territory of Guam, and no opinion is expressed as to the laws of any other jurisdiction.

Yours faithfully,

FOURTEENTH SCHEDULE

TESTING PROCEDURES

I. Guarantee Tests

(1) Purpose of the Guarantee Tests

Performance tests shall be performed to demonstrate to GPA that the Power Station generator output and the Power Station's Net Heat Rate are in accordance with the Specifications (the "Guarantee Tests"). The Guarantee Tests shall be performed to demonstrate completion of the Power Station.

(2) Purpose of Testing During Co-operation Period

At the commencement of each Contract Year (i) a Net Heat Rate test shall be performed to determine the Adjusted Actual Net Heat Rate for such Contract Year and (ii) if so requested by GPA, a Capacity test shall be performed to demonstrate Owner's ability to provide GPA the Contracted Capacity ("Annual Performance Tests").

(3) Test Conditions

- a) all units of the Power Station will be tested by Owner and results compared to the Contractual Net Heat Rate and generating capacity described in the Specifications.
- b) The measuring points will be the fuel supply meters, and the electricity billing meters.
- c) The Power Station is to be tested when the units are in clean condition. The Guarantee Tests will be conducted as soon as reasonably possible following start-up of the Power Station. Annual Performance Tests to be conducted each Contract Year to demonstrate the Adjusted Actual Net Heat Rate will be conducted within fourteen (14) days of the commencement of such Contract Year. Annual Performance Tests to demonstrate Owner's ability to provide the Contracted Capacity will be conducted within fourteen (14) days of any nomination by Owner.
- d) Throughout the Guarantee Tests and the Annual Performance Tests, measurements will be taken while the Power Station is operated at maximum continuous rating ("MCR").

- e) If Owner notifies GPA that the Power Station is to be tested for partial or early completion or final completion, the test conditions above and the test procedures below shall apply to such testing provided that (i) in respect of Capacity, Owner shall only be required to achieve the minimum Capacity set forth in Clause 5.5 (it being understood and agreed that no minimum Capacity is required for partial or early completion) and (ii) in respect of the tested Net Heat Rate, a value in excess of the Contractual Net Heat Rate shall not mean a failure of the Guarantee Tests or the Annual Performance Tests but will establish the Adjusted Actual Net Heat Rate as a basis for the Net Heat Rate bonus/penalties pursuant to the Eighth Schedule. If the Net Heat Rate test results in an Adjusted Actual Net Heat Rate in excess of the Contractual Net Heat Rate, heat rate penalties will accrue for the Contract Year until a retest is completed at Owner's option after scheduling a retest with GPA. GPA's approval of the retest schedule shall not be unreasonably withheld or delayed.
- f) If Owner has successfully completed a partial completion test, the final Guarantee Tests to demonstrate completion of the Power Station shall nonetheless be for the total Power Station.
- g) The performance of the engines of the Power Station will be based on the clean fuel consumed by the engines without provision for Nox reduction.

(4) Test Procedures

- a) During testing, both GPA and Owner will make every effort to maintain the frequency, load, power factor and stator voltage steady and as near as possible to specified values.
- b) Electrical power output will be measured by a three phase integrating watt hour meter (the billing meter), calibrated at a laboratory approved by Owner and GPA immediately prior to the tests.
- c) Fuel flow will be measured by the volumetric flow meter located on the fuel supply pipelines. The meter will be calibrated by an approved establishment for the load range and calibration curves will be produced for inspection.
- d) All test points are to be taken under steady-state conditions. Steady-state conditions are assumed to exist when the variation in engine-generator output (kW) reaches stability for a period of fifteen (15) minutes.



- e) When the following fluctuations are exceeded the test results shall be considered by both GPA and Owner to determine whether they are acceptable or not. The term "fluctuation" is intended to mean the difference between the maximum or minimum value of a variable for a single test point and average of the values recorded for that variable at the test point.

		<u>Maximum Fluctuation</u>
inlet air temperature	=	1.5 degree C
Fuel Rate	=	2%
Speed of load engine or System frequency	=	1%
Measured load or output in (kW)	=	2%

- f) The tests will be conducted using normal operating fuel with specifications in accordance with the Fourth Schedule. Fuel heating value and specific gravity will be determined by a properly qualified laboratory using not less than three (3) samples during the test.
- g) Test readings for the Guarantee Tests and the Annual Performance Tests will be recorded at fifteen (15) minute intervals during a two (2) hour period after the units have achieved a steady state condition.
- h) Instrumentation

Instruments used to measure performance are all panel instruments unless otherwise mentioned.

(5) Tolerance

Output and heat rate at MCR are guaranteed without tolerance.

(6) Heat Rate Calculation

$$\text{Station Heat Rate, } \frac{\text{BTU}}{\text{kWh}} = \frac{\text{Total Heat Input of Fuel}}{\text{Net Electrical Power Output}}$$

Total Heat Input of Fuel,  $\frac{\text{BTU}}{\text{hr}}$  = Weight of Fuel Input in

$\frac{\text{lb}}{\text{hr}}$  x Heating value,  $\frac{\text{Btu}}{\text{lb}}$

Net Electrical output is measured by the Kwhr meter on the high voltage side of the generator transformer:

Note: The tested Actual Adjusted Net Heat Rate is the weighted average of the tested Actual Adjusted Net Heat Rates of the Guarantee Tests and the Annual Performance Tests respectively.

TABLE 1

## Instrumentation for Heat Rate Testing

Measurement Item	Qty.	Primary Device	Secondary Device	Location of Primary Dev.
Atmospheric pressure	1	Barometer	-	In plant at engine level
Inlet temp.	2	Thermometer	-	Inlet to air filter
Net Fuel Flow	TBD	Fuel Flow	-	Fuel supply line and leak return lines
Fuel Temp.	TBD	Thermometer	-	At fuel meter
Fuel specific gravity	1	Power Station Lab.	Lab. tests	-
Fuel heating value	1	Power Station Lab.	Lab. tests	-
Net power output	1	Precision kilowatt hour meter	-	HV side of transformer

FIFTEENTH SCHEDULESAMPLE COMPUTATIONS OF MONTHLY BILLINGS.PENALTIES AND BONUSES, AVAILABILITY FACTOR, AND CCR ADJUSTMENT

## I. Normal Condition Monthly Billing

## Data and Assumptions:

- Billing Period = January 1999  
Nominal capacity = 79,600 kW  
Contracted Capacity = 79,600 kW  
Availability Factor = 1  
Capacity factor = 75%  
Assume no Forced Outage or Schedule Outage  
"y" variable (0.90 NC = CC) = 0  
U.S. GDP<sub>B</sub> (Base Year September 1996) = 120  
U.S. GDP<sub>C</sub> (December 1998 ) = 133
- Actual energy delivered = 44,416,800 kWh

## A. CAPACITY FEE:

$$C = [(CCR * CC * AF) - (y * 1.05) (CCR) (NC - CC)]$$

where:

$$CCR = \$16.578/\text{kW}/\text{mo} \text{ (1996 dollars)}$$

$$NC = 79,600 \text{ kW}$$

$$CC = 79,600 \text{ kW}$$

$$AF = 1.0$$

$$y = 0.$$

$$C = (\$16.578 * 79,600 * 1.0) - ((0 * 1.05) * \$16.578 * (79,600 - 79,600)) = \$1,319,608.80$$

## B. FIXED O&amp;M FEE:

$$FOM = [(FOMR * CC * AF) - (y * 1.05) (FOMR) (NC - CC)] * PI$$

where:

$$\text{FOMR} = \$6.372/\text{kW}/\text{mo} \text{ (1996 dollars)}$$

$$\text{NC} = 79,600 \text{ kW}$$

$$\text{CC} = 79,600 \text{ kW}$$

$$\text{AF} = 1$$

$$y = 0$$

$$\text{PI} = \text{GDP Current Year}/\text{GDP Base Year}$$

$$\text{GDP Current Year} = 133$$

$$\text{GDP Base Year} = 120$$

$$\text{FOM} = [(\$6.372 * 79,600 * 1) - ((0 * 1.05) (\$6.372) (79,600 - 79,600))] * (133/120) = \$562,159.08$$

### C. VARIABLE O&M FEE:

$$\text{VOM} = \text{VOMR} * \text{E} * \text{PI}$$

where:

$$\text{VOMR} = \$ 0.0024 \text{ (1996 dollars)}$$

$$\text{E} = 44,416,800 \text{ kWh}$$

$$\text{PI} = \text{GDP Current}/\text{GDP Base Year}$$

$$\text{GDP}_c = 133$$

$$\text{GDP}_B = 120$$

$$\text{VOM} = \$0.0024 * 44,146,800 * (133/120) = \$118,148.69$$

## II. Discounted Electricity Payments

Data and Assumptions:

Partial completion = October 20, 1998

Completion Date = December 22, 1998

Days = 64 days

Demonstrated Capacity (DC) = 39,900 kW

$$D = (\text{CCR} + \text{FOMR}) * \text{DC} * 0.75 * \text{Days}/30$$

where:

$$\text{CCR} = \$16.578/\text{kW}/\text{mo} \text{ (1996 dollars)}$$

$$\text{FOMR} = \$6.372/\text{kW}/\text{mo} \text{ (1996 dollars)}$$

$$D = (\$16.578 + \$6.372) * 39,900 * 0.75 * 64/30 = \$1,465,128.00$$

### III. Calculation of Annual Availability Factor

#### Data and Assumptions:

Contract Year No. 3 to determine the Availability Factor for  
Contract Year No. 4

Downtime available for Contract Year = 876 hours plus 102  
Carried Forward Hours from previous Contract Year = 978 hours

Downtime hours used during Contract Year No.3 897 hours

Contracted Capacity for Contract Year No. 3 = 79,600 kW

Downtime = 897 Downtime hours \* 79,600 kW of Contracted  
Capacity = 71,401,200 kWh

Force Majeure production loss = 29 hours of Force Majeure, 23 hours of which was  
a total loss of output (79,600kW \* 23) hours = 1,830,800 kWh, plus 6 hours at 1/2  
capacity (79,600kW/2 \* 6 hours = 238,800 for a total of 2,069,600 kWh.

Available hours not dispatched or not dispatched at full  
load = 125,848,100 kWh

AF = annual actual net production/TMEG

where:

TMEG = Theoretical Maximum Energy Generation =  
Contracted Capacity (79,600 kW) \* [Hours in year (8,760)]  
minus Downtime (71,401,200kWh) minus Force Majeure lost  
production (2,069,600 kWh) minus Available hours not  
dispatched or not dispatched at full load (125,848,100 kWh) = 497,977,100 kWh

Annual actual net production = 496,823,400

AF = 496,823,400/497,977,100 = 0.99768

However, because the allowable Downtime hours were not all used during the  
Contract Year (978 hours available versus 897 hours used), pursuant to the definition  
of Downtime in the Eighth Schedule AF = 1.

IV. Heat Rate Penalty Calculation

Data and Assumptions:

Adjusted Actual Heat Rate is 7,846 BTU/kWh HHV  
Documented fuel cost is \$2.677/mill. BTU HHV

$$P = E * FC * PHRC * 1/1,000,000$$

where:

$$E = 522,972,000 \text{ kWh}$$

$$FC = \$2.677/\text{MMBTU HHV}$$

$$\begin{aligned} PHRC &= \text{Adjusted Actual Heat Rate minus Contractual Heat Rate} \\ &= 7,846 - 7,720 = 126 \end{aligned}$$

$$\begin{aligned} P &= 522,972,000 \text{ kWh} * \$2.677/\text{MMBTU HHV} * \\ &126 \text{ BTU/kWh} * 1/1,000,000 = \$176,399.50 \end{aligned}$$

V. Heat Rate Bonus Calculation

Data and Assumptions:

Adjusted Actual Heat Rate is 7,594 BTU/kWh HHV  
Documented fuel cost is \$2.677/mill. BTU HHV

$$B = E * FC * BHRC * 1/1,000,000 * 1/2$$

where:

$$E = 522,972,000 \text{ kWh}$$

$$FC = \$2.677/\text{MMBTU LHV}$$

$$\begin{aligned} BHRC &= \text{Contractual Heat Rate minus Adjusted Actual Heat Rate} \\ &= 7,720 - 7,594 = 126 \end{aligned}$$

$$\begin{aligned} B &= 522,972,000 \text{ kWh} * \$2.677/\text{MMBTU HHV} * \\ &126 \text{ BTU/kWh} * 1/1,000,000 * 1/2 = \$88,199.75 \end{aligned}$$

VI. Contract Capacity Rate adjustment in connection with issuance of qualifying certificate by GEDA to Owner

assume:

1. Qualifying certificate issued to Owner is for a 60% income tax rebate for a period of 18 years.
2. The net present value ("NPV"), as of the close of financing for construction of the Power Station, of the cashflow resulting from a 75% rebate of the income taxes for the Co-operation Period (20 years) as determined from the base case cash flow projections as provided in Section 4.1 is \$5,000,000 (the discounted Qualified Amount).
3. The NPV of the tax rebate cashflow stream resulting from a 37.5% rebate for 20 years as provided in Section 4.1 is \$2,490,000 (the discounted Unqualified Amount).
4. The NPV of the tax rebate cashflow stream resulting from a 60% income tax rebate for a period 18 years as provided in Section 4.1 is \$3,680,000 (the discounted Interim Amount).

As provided in Section 4.1, the increased CCR is

$$\begin{aligned}
 CCR_A &= \text{increased CCR} \\
 &= \frac{[(\text{Discounted Qualified Amount} - \text{Discounted Interim Amount})]}{\text{Discounted Qualified Amount}} \\
 &\quad * (\text{Qualified Amount CCR} - \text{Unqualified Amount CCR}) + \text{CCR for Qualified Amount} \\
 &= \frac{[(5,000,000 - 3,680,000) * (\$17.369 - \$16.578)] + \$16.578}{5,000,000} \\
 &= [(0.264) * (\$0.791)] + \$16.578 \\
 &= \$16.787
 \end{aligned}$$



**ENRON**

**AMENDMENT NO. 1  
TO  
ECA**

**AMENDMENT NO. 1  
TO ENERGY CONVERSION AGREEMENT**

THIS AMENDMENT NO. 1 TO ENERGY CONVERSION AGREEMENT ("Amendment") is made and entered into this <sup>of</sup> 30 <sup>#</sup> RM day of June, 1997, by and between GUAM POWER AUTHORITY ("hereinafter referred to as "GPA"), a public corporation and autonomous instrumentality of the Government of Guam, acting through its Governing Board of Directors and ENRON DEVELOPMENT PITI L.L.C., (hereinafter referred to as "EDPL"), a private limited liability company, duly organized and existing under the laws of the State of Delaware, duly registered to do business in Guam, with its local address at 545 West Marine Drive, Anigua, Guam 96910 (GPA and EDPL are sometimes referred to herein collectively as "the Parties").

**RECITALS**

WHEREAS, GPA and Enron Development Piti Corp. entered into an Energy Conversion Agreement (the "ECA") on September 30, 1996 pursuant to which EDPL has agreed to construct, own and operate the "Power Station" (as defined in the ECA);

WHEREAS, EDPL is the successor and assignee of Enron Development Piti Corp.;

WHEREAS, Clause 32 of the ECA provides that the ECA may be amended at any time by mutual agreement of the parties in writing and signed by a duly authorized representative of each party;

WHEREAS, in accordance with Clauses 7.1, 7.2, 7.3, 7.4, 7.7 and 32 of the ECA, the ECA is hereby amended as set forth below.

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

1. **Definitions.** Unless the context clearly requires otherwise, capitalized terms

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used herein but not otherwise defined shall have the meaning provided in the ECA. Unless otherwise specified, clause references are to clauses of the ECA.

2. **Extension of Effective Date.** Pursuant to Clause 7.7 of the ECA, GPA and EDPL hereby extend the required date for satisfaction of all the conditions set forth in Clauses 7.1, 7.2 and 7.3 of the ECA until August 18, 1997.

3. **Waiver of Right to Receive Net Heat Rate Bonus Payments under ECA.** Paragraph 4.5 of the Eighth Schedule of the ECA provides for, among other things, the payment by GPA to EDPL of a bonus relating to Net Heat Rate under certain circumstances. EDPL hereby waives the right to receive bonuses on account of Net Heat Rate as contemplated by paragraph 4.5 of the Eighth Schedule of the ECA; provided that the Net Heat Rate is calculated in accordance with the Net Heat Rate Testing Procedure set forth in Annex A, attached hereto and incorporated by reference herein. Except as expressly set forth above, nothing in this Amendment shall affect or alter any of the parties' rights or obligations under the ECA, including GPA's obligations to make, and EDPL's rights to receive, all other payments contemplated by the ECA.

4. **Governing Law.** This Amendment shall be governed by and construed in accordance with the laws of the Territory of Guam.

5. **Multiple Counterparts.** This Amendment may be executed in multiple counterparts, each of which shall be deemed to constitute one and the same agreement.

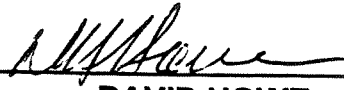
6. **Successors and Assigns.** This Amendment shall be binding upon and inure to the benefit of the Parties and their respective permitted successors and assigns.

7. **Severability.** The unenforceability, invalidity, or illegality of any part or provision of this Amendment shall not render the other provisions unenforceable, invalid, or illegal.

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8. **ECA Remains in Full Force and Effect.** Except as otherwise expressly provided above, the terms and conditions of the ECA shall remain in full force and effect and shall remain unaffected and unimpaired.

**ENRON DEVELOPMENT PITI L.L.C.**

By:   
Name: **DAVID HOWE**  
Title: **Authorized Representative**

**GUAM POWER AUTHORITY**

By:   
Name: **RICARDO UNPINGCO**  
Title: **General Manager**

By:   
Name: **EDUARDO R. ILA**  
Title: **for: FRANK SHIMIZU**  
**Chairman, Board of Directors**

AMEND.#3

*RH*  
*#*

## ENRON DEVELOPMENT PITI

### NET HEAT RATE

Capitalized terms used but not defined herein shall have the meaning ascribed to them in the ECA.

1. Conduct the Performance Test of the plant to verify the guaranteed values for the Net Heat Rate and Net Power Output with water emulsified fuel.
2. Mark graph to reflect the Actual Net Plant Power Output obtained in Step 1. Draw a vertical line through this point to cross 45% water emulsion, basic configuration (Curve A) and the average curve of B and C.
3. Mark the graph to reflect the actual heat rate obtained in Step 1. Draw a horizontal line through this point to intersect the vertical line described in Step 2.
4. Determine the difference of the heat rates corresponding to the Actual Net Plant Power Output between curve A and the average curve of B and C. Based on the given scale of the graph, this difference amounts to 350 Btu/kWh HHV at 87.2 MW net plant power output.
5. Subtract the difference between the two curves obtained in Step 4 from the actual heat rate. This is the adjusted heat rate corresponding to the operation of the plant modified for the use of water emulsified fuel, but operated without water emulsion.
6. Compare the Adjusted Actual Net Heat Rate obtained in Step 5 with the Contractual Net Heat Rate in the ECA.

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## SAMPLE CALCULATION

Contractor is guaranteeing a heat rate of 8,416 Btu/kWh (HHV).


Assume our test results are 87.2 MW and 8,416 Btu/kWh (HHV). Per referenced documentation and graph at 100% MCR point, the delta value of the appropriate curves is approximately 350 Btu/kWh. Therefore, the calculation is as follows:

Abated, HHV	8,416 Btu/kWh	- Contractor's Guarantee
	<u>- 350</u>	- Manufacturer's Curve
Unabated, HHV	8,066 Btu/kWh	- Equivalent HR for ECA Comparison

The 8,066 is then used for a direct comparison to the 7,720 Btu/kWh (HHV) for assessment of penalties: -

$$\begin{array}{r} 8,066 \text{ Btu/kWh (HHV)} \\ - \quad \underline{7,720} \text{ Btu/kWh (HHV)} \\ \hline 346 \text{ Delta Btu/kWh} \end{array}$$

In this example, 346 would then be utilized according to the ECA for calculation of penalties.



Burmeister & Wain Scandinavian Contractor A/S



TO : Enron Engineering & Construction Company  
FAX NO. : (+1) 713 846 6120

Post Office Box 235  
Gydevang 35  
DK-3450 Allerød, Denmark

ATTN. : Mr. Roger Tietz  
CC : Mr. Rob Bacondy, Enron Guam +671 472 1666  
THD, CL, NEC, APF, JNI

Telephone +45 48 14 00 22  
Telefax +45 48 14 01 50  
Telex 31329 BWSCDK  
Telegrams BWSCDEN  
Reg.no. 62868

DATE : June 13 1997  
OUR REF. : 19706f16.nec

FAX REF. NO 7956  
PAGE 1 OF 2

RE : 7419 Guam Piti Power Plant  
SUBJECT : Performance Curves

TELEFAX

Dear Roger,

Reference is made to fax dated 1997.06.10 from BWSC-GUAM to Lennart Thye requesting a revision of our performance curve on behalf of Rob Bacondy, Guam. Further we refer to telecon of today with Rob Bacondy.

Rev. 3 (13/6/97) is different from rev. 1 dated 6/5/97 as follows:

At the request of Rob Bacondy we have added an extra curve D, which is the average of the two curves B and C:

B: Heat Rate of a plant configured for fuel/water emulsion, operated without water, slightly modified.

C: Heat Rate of a Fuel optimized plant

The curves A, B and C are unchanged.

All heat rates are as pointed out earlier nominal figures and based on HHV.

We hope this will serve your needs.

Best regards

BURMEISTER & WAIN SCANDINAVIAN CONTRACTOR A/S

*Lennart Thye*  
Lennart Thye

*Niels-Erik Clausen*  
Niels-Erik Clausen

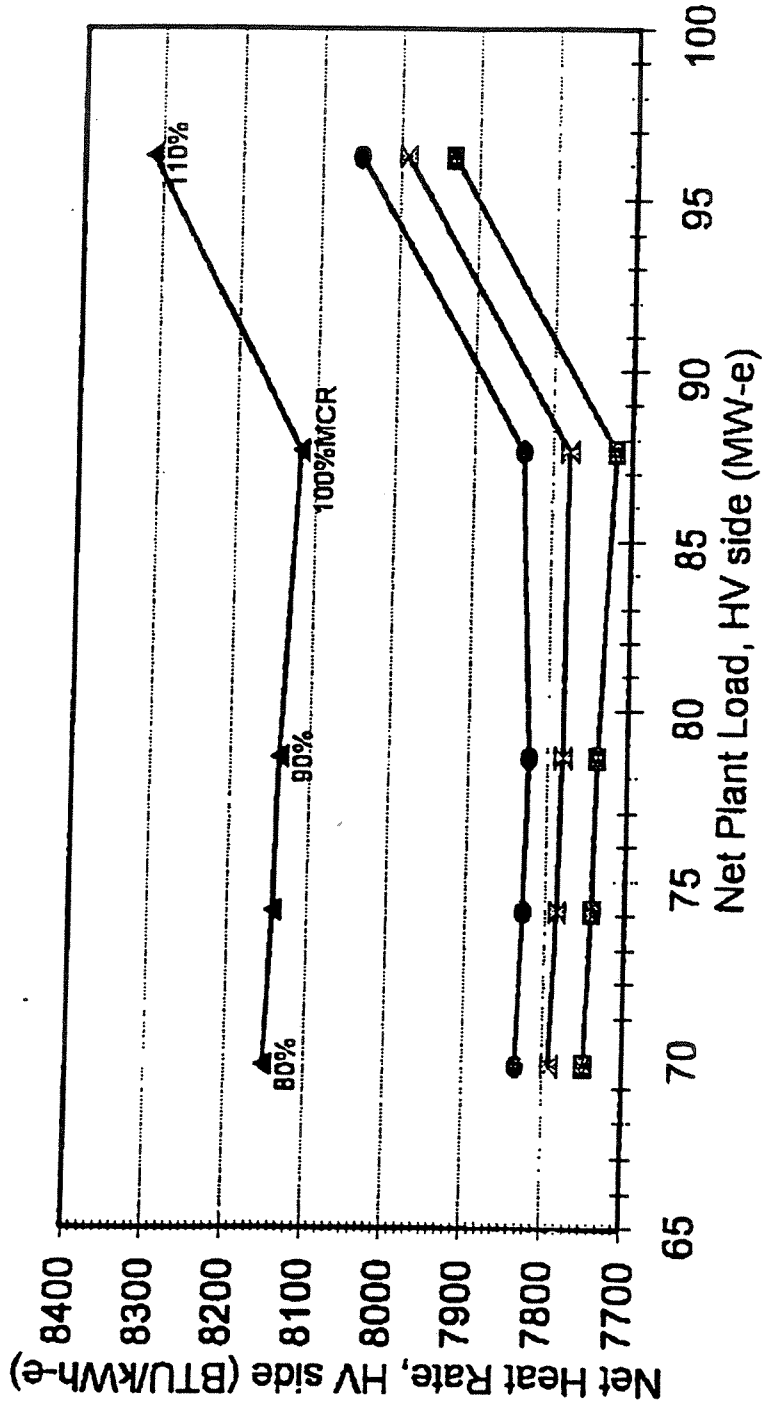
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R:174181QPROPARTHRV2.WBI

# 7419 - GUAM PITI POWER PLANT

## Expected Plant Net Heat Rate (HHV)



▲ A: 45 % water emulsion, basic config.    ■ C: Fuel optimized DE + STG  
 ● B: No water emulsion, mod. config.    ✕ Average curve of B and C

*Handwritten initials/signature*

NEC/13/06/97 rev 3

BWSC A/S



**ENRON**

**FUEL MANAGEMENT  
AGREEMENT**

**FUEL MANAGEMENT AGREEMENT**

*RU*  
*at 3:20*  
This Fuel Management Agreement ("Agreement") is made and entered into as of June 30, 1997 by and between ENRON DEVELOPMENT PITI L.L.C., a Delaware limited liability company (hereinafter referred to as "Owner") and GUAM POWER AUTHORITY, a government agency of the Territory of Guam (hereinafter referred to as "GPA").

**RECITALS**

WHEREAS, Owner (as successor and assign of Enron Development Piti Corp.) and GPA are party to an Energy Conversion Agreement (the "ECA") dated September 30, 1996, which provides, among other things, for Owner to build, own and operate the "Power Station" (as defined in the ECA) and for GPA to supply and deliver the fuel required for use by Owner in commissioning and operating the Power Station; and

WHEREAS, the ECA provides that Owner and GPA are to enter into a Fuel Management Agreement with respect to the management and security of fuel for the Power Station; and

WHEREAS, this Agreement is the Fuel Management Agreement contemplated by the ECA.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Use of Terms.** Unless the context clearly requires otherwise, capitalized terms used in this Agreement but not otherwise defined shall have the meaning as set forth in the ECA. Unless otherwise specified, section references are to sections of this Agreement.
2. **Term.** The term of this Agreement shall commence on the Effective Date of the ECA and shall end on the Transfer Date under the ECA.
3. **Ordinary Maintenance of Fuel Tanks.** Owner shall, at its own cost, provide for the day-to-day routine operation, ordinary preventive maintenance, minor maintenance/repair/replacement, security and safety of the on-Site fuel oil storage tanks, pipelines, meters, associated pumps and any related equipment inside the Site boundary. Owner shall, at its own cost, provide for the security and safety of the fuel supply in the on-Site fuel oil storage tanks. The foregoing shall not relieve GPA of any of its obligations under the ECA, including with respect to Contaminants as set forth in the Fourth Schedule to the ECA.

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4. **Major Maintenance.** Owner and GPA shall jointly determine when any major maintenance/repair/replacement is required to be undertaken with respect to the on-Site fuel oil storage system. "Major maintenance" shall only include those items which are non-routine and do not include general maintenance. Major maintenance may include repainting of the tanks, repair or replacement of damaged pipelines, or cleaning in the nature of tank overhaul. If it is determined that any major maintenance is required, Owner shall, following consultation with and concurrence of GPA (such concurrence not be unreasonably withheld or delayed), select and manage a third party contractor to carry out such major maintenance, which selection and management shall be at Owner's cost; provided, however, that all costs and expenses of a third party contractor relating to any such major maintenance shall be for the account of GPA, and GPA shall promptly reimburse Owner for any costs or expenses incurred by Owner with respect thereto.
  
5. **Delivery and Title to Fuel.** GPA shall be responsible for delivery of the fuel supply up to the last flange before the on-Site fuel oil storage tanks. Notwithstanding delivery of the fuel supply by GPA, GPA shall remain the owner of the fuel supply and continue to hold title to the fuel supply and shall be responsible for any lien or encumbrance on the fuel supply. Owner shall not be responsible for the loss, damage, depreciation or shrinkage of the fuel supply unless due to Owner's negligence or misconduct in the performance of its obligations under this Agreement and under the ECA.
  
6. **Fuel Storage and Accountability.**
  - (a) **Protocols.** GPA and Owner shall, in a timely manner, no later than July 15, 1998, establish and agree on the methodology and accountability protocols regarding the fuel supply delivered to on-Site storage tanks and as consumed by the Owner's generating plants.
  
  - (b) **Metering.** The Owner shall provide the metering system at no cost to GPA, install meter(s) after the last flange before the suction of the on-Site storage tanks and immediately after the valve at the discharge of the tank(s) to feed the generating units. The on-Site storage tanks shall be certified/calibrated by third party surveyor(s) and shall be provided with gauging batch and automatic Varec Gauging system. In the event of any quantity discrepancy between the meter and the tank innage, the tank innage quantity shall prevail.
  
7. **Emergency Procedures.** GPA and Owner shall, at least 90 days prior to the estimated date of the first shipment of fuel supply under the ECA, agree to specific and detailed emergency procedures (including environmental and safety procedures) regarding the fuel supply.



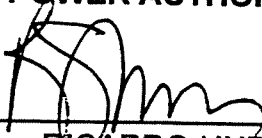
8. **Relationship to ECA.** This Agreement shall be performed and construed in a manner consistent with the parties' rights, duties and obligations under the ECA, including the Fourth Schedule thereof and other provisions therein regarding fuel and fuel supply, quantity and handling.

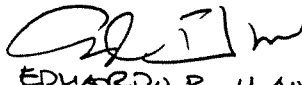
9. **Miscellaneous.**

- (a) The provisions of the ECA shall apply to this Agreement.
- (b) Except for routine and similar communications contemplated by the performance of this Agreement, each communication to be made hereunder shall be made in accordance with the provisions set forth in Clause 21 of the ECA.


IN WITNESS WHEREOF, each of the parties has caused this Agreement to be duly executed in more than one copy, each of which shall be deemed to be an original, as of the day and year first above written.

**GUAM POWER AUTHORITY**

By:   
Name: RICARDO UNPINGCO  
Title: General Manager

By:   
Name: EDUARDO R. ILA  
Title: Chairman, Board of Directors

**ENRON DEVELOPMENT PITI L.L.C.**

By:   
Name: DAVID HOWE  
Title: Authorized Representative



**ENRON**

**CONSENT  
AND  
AGREEMENT**

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CONSENT AND AGREEMENT

Dated as of June 30, 1997

made by

GUAM POWER AUTHORITY

and

ENRON DEVELOPMENT PITI, L.L.C.

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CONSENT AND AGREEMENT

THIS CONSENT AND AGREEMENT (this "Consent and Agreement"), dated as of June 30, 1997, by and between GUAM POWER AUTHORITY, a public corporation and autonomous instrumentality of the Government of Guam, acting through its Governing Board of Directors ("GPA") and ENRON DEVELOPMENT PITI L.L.C., a Delaware limited liability company, duly registered to do business in Guam and successor to Enron Development Piti Corp. ("Owner"), for the benefit of ABN AMRO BANK N.V., a banking institution organized under the laws of the Netherlands as collateral agent for the Lenders party to the Credit Agreement referred to below (in such capacity, together with its successors in such capacity, the "Collateral Agent").

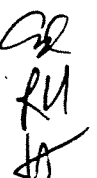
1. Definitions. The following terms shall have the following meanings (and each reference to any agreement shall mean such agreement as amended or modified from time to time):

(a) "Assigned Agreements" shall mean the ECA, the Environmental Indemnity, the MOU, the Fuel Agreement and the Sublease (provided that any assignment of the Sublease, and the consent of GPA thereto, is subject to the condition precedent of obtaining the Master Lessor Consent).

(b) "Basic Documents" shall mean the Credit Agreement, the Security Documents, and any note, interest rate protection agreement, intercreditor agreement, or other agreement entered into for the benefit of the Collateral Agent or the Lenders.

(c) "Credit Agreement" shall mean the Credit Agreement, dated as of June 30, 1997, among Owner, the Lenders and ABN AMRO Bank N.V., as administrative agent for the Lenders.

(d) "Credit Agreement Obligations" shall mean, at any time, the sum, computed without duplication, of the following: (i) the aggregate principal amount outstanding of Loans under the Credit Agreement plus accrued interest thereon, plus (ii) all other amounts from time to time



payable under the Basic Documents plus accrued interest thereon, plus (iii) all amounts payable by the Owner to any Lender in connection with any interest rate protection agreement or arrangement in connection with the Loans; and shall include any deferral, extension, refunding or refinancing of any of the foregoing, in each case whether direct or indirect, absolute or contingent, due or to become due.

(e) "ECA" shall mean the Energy Conversion Agreement, dated as of September 30, 1996, between GPA and Owner, as amended by a First Amendment dated as of June 30, 1997. *GR HU*

(f) "Environmental Indemnity" shall mean the Environmental Indemnification Agreement, dated as of June 30, 1997, between GPA and Owner. *GR HU*

(g) "Fuel Agreement" shall mean the Fuel Management Agreement, dated as of June 30, 1997, between GPA and Owner. *GR HU*

(h) "Lenders" shall mean the lenders party to the Credit Agreement.

(i) "Master Lease" shall mean the Lease Agreement (Identification No. N6274296RP00101), dated September 15, 1996, between GPA and the Master Lessor.

(j) "Master Lessor" shall mean the United States Department of the Navy, acting through the Commander, Pacific Division, Naval Facilities Engineering Command, or any other person acting as lessor under the Master Lease.

(k) "Master Lessor Consent" shall mean a consent, to the extent required pursuant to Section 18 of the Master Lease, of the Master Lessor to the assignment of the Sublease to the Collateral Agent.

(l) "MOU" shall mean the Memorandum of Understanding, dated as of May 5, 1997, between GPA and Owner.



(m) "Premises" shall mean the real property described on Exhibit B to the Sublease.

(l) "Security Documents" shall mean the (i) the Assignment of Contracts between the Owner and the Collateral Agent dated as of June 30, 1997, (ii) the Mortgage between the Owner and the Collateral Agent dated as of June 30, 1997, (iii) the Assignment of Contracts between the Owner and the Collateral Agent dated as of June 30, 1997, and (iv) each financing statement and other security, pledge or comparable agreement entered into for the benefit of the Collateral Agent or the Lenders to secure the Credit Agreement Obligations.

(m) "Sublease" shall mean the Sublease Agreement, dated as of May 5, 1997, between GPA and Owner.

(n) Terms not defined above but used herein shall have the meanings specified in the ECA.

2. Representations. GPA hereby represents and warrants to the Collateral Agent and each of the Lenders that each of the representations and warranties made by GPA in Section 29.2 of the ECA is true and complete as of the date hereof with the same force and effect as if made on and as of the date hereof and as if each reference to "Agreement" set forth in said Section referred to each of this Consent and Agreement and each Assigned Agreement. In addition, GPA hereby represents and warrants to the Collateral Agent and the Lenders that:

(a) To the best knowledge of GPA, the Owner is not and has not been in default under any of the Assigned Agreements. After giving effect to the assignment by the Owner of the Assigned Agreements to the Collateral Agent pursuant to the Security Documents, and after giving effect to the acknowledgment of and consent to such assignment by GPA, there exists no event or condition which would constitute a default, or which would, with the giving of notice or lapse of time or both, constitute a default under the Assigned Agreements.

(b) GPA has duly performed and complied with all covenants, agreements and conditions contained in the Assigned Agreements and this Consent and Agreement required to be performed or complied with by it on or before the date

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hereof, and each Assigned Agreement, as of the date hereof, is in full force and effect and has not been amended (other than as indicated in the definition of Assigned Agreements or to the extent provided herein), and none of the Owner's rights under any of the Assigned Agreement have been waived. No Assigned Agreement has been assigned by GPA (or by Owner pursuant to GPA's consent), or amended, modified, supplemented or superseded, either orally or in writing (except as set forth in the definitions of the Assigned Agreements).

(c) The Master Lease is in full force and effect and binding upon the parties thereto and all obligations or conditions of the Master Lease to be performed by GPA (including the payment of all amounts, if any, due and owing by GPA as of the date hereof) and, to the best of GPA's knowledge, Master Lessor, and necessary to the enforceability of the Master Lease have been satisfied. The Master Lease has not been assigned by GPA (or by Master Lessor pursuant to GPA's consent), or amended, modified, supplemented or superseded, either orally or in writing.

(d) GPA has a good, legal and marketable leasehold in the Premises, free and clear of all Liens.

(e) Except as disclosed in the Baseline Study of the Premises performed by Ogden, GPA has no knowledge of any hazardous or toxic substances or materials at, on or under the Premises.

3. Consent and Agreement. GPA hereby consents to the assignment of the Assigned Agreements (excluding the Sublease) for the benefit of Collateral Agent pursuant to the terms of the Security Documents, and in the case of assignment of the Sublease, consents to such assignment but the effectiveness of such consent is subject to the condition precedent of obtaining the Master Lessor Consent, and further agrees that:

(a) The Collateral Agent, its successors, designees or assignees (collectively, the "Assignee") shall be entitled to exercise any and all rights and remedies of the Owner under each Assigned Agreement in accordance with the terms of such Assigned Agreement, and GPA shall continue to perform its obligations under such Assigned Agreement

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upon such exercise. Without limiting the generality of the foregoing and subject to the terms of this Consent and Agreement, the Assignee shall have the full right and power to enforce directly against GPA all obligations of GPA under each Assigned Agreement and otherwise to exercise all remedies thereunder and to make all demands and give all notices and make all requests required or permitted to be made by the Owner under such Assigned Agreement. Subject to Section 4 below, the Assignee shall have the right, but not the obligation, to pay all sums due under each Assigned Agreement and to perform any other act, duty or obligation required of the Owner thereunder at any time. Nothing herein shall require the Assignee to cure any default of the Owner under any Assigned Agreement or to perform any act, duty or obligation of the Owner under such Assigned Agreement, but shall only give them the option so to do.

(b) Except as such may be a remedy for breach of an Assigned Agreement by the Assignee and in the event the Assignee fails to exercise its rights to cure the default of Owner as contemplated in Section 4 of this Consent and Agreement, GPA will not, without the prior written consent of the Collateral Agent: (i) cancel, suspend or terminate any of the Assigned Agreements or consent to or accept from the Owner any cancellation, suspension or termination of the Assigned Agreements, (ii) petition, request or take any other legal or administrative action which seeks, or may reasonably be expected, to rescind, cancel, terminate or suspend or amend or modify the Assigned Agreement or any part thereof, or (iii) except for issues regarding day-to-day operations of the Project, such as dispatching, fuel deliveries and the like in the performance of the ECA, amend, supplement or otherwise modify the Assigned Agreements, or accept any consent, waiver or approval by the Owner with respect to GPA's obligations under any Assigned Agreement. GPA shall not amend, supplement or otherwise modify the Master lease in any respect that would reasonably be expected to have a material adverse effect on the rights and obligations of the Owner or the Collateral Agent under the Assigned Agreements or this Consent and Assignment.

(c) A foreclosure or other exercise of remedies or sale under the Security Documents by the Assignee, whether by judicial proceedings or under any power of sale

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contained therein, or any conveyance in lieu of foreclosure by the Owner to the Assignee, shall not require the consent of GPA or constitute a default under the Assigned Agreements (provided that any such action shall be subject to the consent of the Master Lessor to the extent required under the Master Lease).

(d) GPA shall deliver to the Collateral Agent at the address set forth on the signature pages hereof, or at such other address as the Collateral Agent may designate in writing from time to time to GPA, concurrently with the delivery thereof to the Owner, a copy of each notice of default or notice of Force Majeure given by GPA pursuant to the Assigned Agreements.

(e) GPA may not assign or transfer all or any part of its rights, benefits or obligations under the Assigned Agreements without the prior written consent of the Owner and the Collateral Agent.

4. Cure Rights. Notwithstanding anything to the contrary contained in any Assigned Agreement, GPA agrees that:

(a) If an event of default under any Assigned Agreement shall occur, written notice to that effect shall be sent by GPA to the Collateral Agent or its successor or assignee or designee (the "Assignee") and GPA shall not take any action to terminate the Assigned Agreement or exercise any other remedy under such Assigned Agreement; provided that:

(i) If such event of default shall be a default in the payment of money, the Assignee shall have the right, but is under no obligation to, remedy such default not later than thirty (30) days after the receipt of the aforementioned notice (or such longer cure period provided under such Assigned Agreement); or

(ii) If such event of default shall be a default in observing or performing any other covenant or condition to be observed or performed by the Owner under such Assigned Agreement, and such default can be remedied by the Assignee



without obtaining possession of the Premises, the Assignee shall have the right, but is under no obligation to, remedy such default not later than sixty (60) days after the receipt of such notice (or such longer cure period provided under such Assigned Agreement); provided that in the case of a default which cannot with reasonable diligence be remedied, or the remedy of which cannot be commenced, within such period of sixty (60) days (or such longer cure period provided under such Assigned Agreement), the Assignee shall have such additional period as may be reasonably necessary to remedy such default with reasonable diligence and continuity but not to exceed one hundred eighty (180) days; or

(iii) If such event of default shall be a default which can be remedied by the Assignee only upon obtaining possession of the Premises, such Assignee shall have the right, but is under no obligation, to seek to obtain such possession with reasonable diligence and continuity through a receiver or otherwise, and shall remedy such default within sixty (60) days after obtaining such possession; provided that in the case of a default which cannot with reasonable diligence be remedied, or the remedy of which cannot be commenced, within such period of sixty (60) days, such Assignee shall have such additional period as may be reasonably necessary to remedy such default with reasonable diligence and continuity, but not to exceed one hundred eighty (180) days; and

(iv) Upon compliance with the foregoing, any notice of GPA advising of any such event of default or any action of GPA to terminate such Assigned Agreement shall be deemed rescinded and such Assigned Agreement shall continue in full force and effect.

(b) If any Assigned Agreement shall terminate for any reason (other than the Sublease to



the extent provided in Section 8(d) below) or be rejected or not affirmed pursuant to any bankruptcy law or other law affecting creditors' rights, to the extent permitted by applicable law, the Assignee shall have the right, but is under no obligation, to enter into a new agreement with GPA exercisable by notice to GPA within ninety (90) days after the effective date of such termination. The term of said new agreement shall begin on the date of the execution of such new agreement and shall continue for the remainder of the term of such Assigned Agreement. Such new agreement shall otherwise contain the same terms and conditions as those set forth in such Assigned Agreement, as modified by this Consent and Agreement, except for requirements which are no longer applicable or have already been performed. Any new lease shall have the same priority relative to other rights or interests to or in the Premises as the Sublease (as modified by the MOU and this Consent and Agreement), and GPA covenants to discharge or cause to be subordinated to such new lease any lien or encumbrance which was subordinate to the Sublease (as modified by the MOU and this Consent and Agreement) at the time of such termination.

(c) No Assignee shall become liable for the performance or observance of any covenants or conditions to be performed or observed by Owner in an Assigned Agreement unless and until (i) such Assignee becomes the owner of Owner's interest under the relevant Assigned Agreement and specifically assumes such Assigned Agreement and this Consent and Agreement, in writing, or (ii) such Assignee enters into a new agreement with GPA pursuant to subsection (b) above. Thereafter, such Assignee shall be liable for the future performance and observance of such covenants and conditions only so long as such Assignee owns such interest or is a party under such new agreement.

(d) Any purchaser or transferee from the Assignee of an Assigned Agreement shall assume such Assigned Agreement and such purchaser or transferee shall (i) possess, directly or through contractual arrangements, the operational and managerial expertise, experience and manpower necessary to operate and maintain the Power Station

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in compliance with applicable law and to perform satisfactorily its obligations under such Assigned Agreement and (ii) agree to be bound by all the terms and provisions of such Assigned Agreement applicable to the Owner. Upon such assignment and assumption, the Assignee shall be relieved of all obligations under such original Assigned Agreement arising after such assignment and assumption.

(e) Liability of any Assignee in respect of any Assigned Agreement shall be limited solely to such party's interest in the Power Station.

5. Further Assurances. GPA shall at any time and from time to time within thirty (30) days after written request by Collateral Agent, execute and acknowledge and deliver to the Collateral Agent, a written instrument certifying that (a) that such Assigned Agreement is in full force and effect and (b) whether Owner has or has not, as the case may be, defaulted in the performance by Owner of any agreements, terms, covenants and conditions on Owner's part to be performed and if any such default exists, specifying such default.

6. Legal Proceedings. GPA will promptly, but in any event no later than thirty (30) days after obtaining knowledge of such matter, give to the Collateral Agent notice of any proceedings by or before any governmental authority for the purpose of revoking, terminating, withdrawing, suspending, modifying or withholding any government approval, license or permit necessary for, or any other proceeding that, if adversely determined, would reasonably be expected to have a material adverse effect on, the execution, delivery or performance by GPA of its obligations under any Assigned Agreement.

6A. GPA Buyout Option.

(a) Except as provided in Section 6A(b) below, if an Event of Default (as defined in the Credit Agreement but excluding any such Event of Default that occurs as a result of any failure by GPA to perform any of its obligations under the ECA) shall occur and be continuing, and such Event of Default does not constitute a circumstance or event described in Clause 17 of the ECA or otherwise arises out of a circumstance or event described in Clause 17 of the ECA

that in any event with notice or the passage of time or both may lead to a purchase of the Power Station by GPA, then prior to any foreclosure on or sale of the Power Station or of the interests in the Owner by the Collateral Agent, the Collateral Agent shall provide to GPA a written notice (the "Default Notice") stating its intent to foreclose or sell (to the extent permitted by law) on the date provided in such notice, such date to be not less than ~~twenty~~ <sup>THIRTY</sup> (20)<sup>30</sup> days after the later of (i) the date of such notice and (ii) the date the commitments under the Credit Agreement shall have been cancelled and the principal amount then outstanding of, and accrued interest on, the loans under the Credit Agreement declared (or deemed) to be due and payable (and such declaration shall not have been rescinded or cancelled and shall still be in effect) (such period, the "Option Period"). Prior to the expiration of the Option Period with respect to such Default Notice, GPA shall have the option, but not the obligation, to deliver a written notice (the "Option Notice") to the Collateral Agent and to the Owner stating the intent of GPA to purchase the Power Station. In the event that GPA shall deliver a timely Option Notice as provided above, then GPA shall purchase the Power Station on the Purchase Date (as defined below) for a purchase price equal to the ~~higher of (i) the aggregate amount of all Credit Agreement Obligations, and (ii) the fair market value of the Power Station determined by an independent appraiser acceptable to GPA and the Owner. If GPA and the Owner cannot agree on a single independent appraiser within ten (10) days of the delivery of the Option Notice, then each shall appoint one independent appraiser within fifteen (15) days of the delivery of the Option Notice, and the two independent appraisers so appointed shall appoint a third independent appraiser within ten (10) days of the last appointed of such two independent appraisers. If there are three independent appraisers, then each shall provide a report of the fair market value of the Power Station within thirty (30) days of being appointed, and the fair market value for the purpose of this Section shall be the average of the values set forth in such reports.~~ The provisions of Clause 14 (other than Clauses 14.1 and 14.2) of the ECA shall apply to any purchase and transfer of the Power Station pursuant to this Section. Any independent appraiser appointed hereunder shall be employed by a nationally recognized appraisal firm and experienced in appraising and

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~~valuing electric power generation assets similar to the Power Station and shall determine the fair market value of the Power Station by taking into account the value of the Power Station as a going concern entitled to payments in accordance with, and during the remaining term (assuming no termination) of, the ECA.~~ Any purchase and transfer of the Power Station pursuant to this Section shall be completed as soon as practicable, but in any event within sixty (60) days, after the last day of the Option Period (the "Purchase Date"); provided that notwithstanding the delivery of a Default Notice, the existence of an Option Period or the delivery of an Option Notice, Owner shall have any right provided by applicable law to cure any Event of Default prior to the sale of the Power Station and any cure of an Event of Default required to be accepted by the Lenders shall terminate the Default Notice, Option Period and Option Notice based on such Event of Default.

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(b) If an Event of Default relating to the bankruptcy, insolvency or similar condition of, or similar circumstances affecting, the Owner, as more fully described in Sections 9(g) or 9(h) of the Credit Agreement (but excluding any such Event of Default that occurs as a result of any failure by GPA to perform any of its obligations under the ECA) (collectively, a "Bankruptcy Event"), shall occur, then the Collateral Agent shall provide to GPA a written notice (the "Bankruptcy Default Notice") stating the existence of such Bankruptcy Event and its intent to sell its rights under the Basic Documents on the date provided in such notice, such date to be not less than ~~twenty~~ <sup>THIRTY</sup> (20<sup>30</sup>) days after the Bankruptcy Event (and such Bankruptcy Event shall not have been rescinded, cancelled or cured and shall still be in effect) (such period, the "Bankruptcy Option Period"). Prior to the expiration of the Bankruptcy Option Period with respect to such Bankruptcy Default Notice, GPA shall have the option, but not the obligation, to deliver an Option Notice to the Collateral Agent and to the Owner stating its intent to purchase the right, title and interest of the Lenders and the Collateral Agent under the Basic Documents for a purchase price equal to the aggregate amount of the outstanding Credit Agreement Obligations. Such purchase shall be completed as soon as practicable, but in any event within thirty (30) days, after the last day of the Bankruptcy Option Period; provided that

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notwithstanding the delivery of a Bankruptcy Default Notice, the existence of a Bankruptcy Option Period or the delivery of an Option Notice, Owner shall have any right provided by applicable law to cure any Bankruptcy Event prior to the sale of the Basic Documents and any cure of a Bankruptcy Event required to be accepted by the Lenders shall terminate the Bankruptcy Default Notice, Bankruptcy Option Period and Option Notice based on such Bankruptcy Event. Any sale of the Basic Documents by the Lenders shall be on an "AS IS, WHERE IS" basis, without any representation or warranty of any kind whether express or implied except as to the title of such Lenders in such Basic Documents.

(c) If at any time after delivery of a Default Notice pursuant to Section 6A (a) above and prior to the completion of a transfer of the Power Station to GPA a Bankruptcy Event shall occur, then the provisions of Section 6A(b) above shall be deemed to apply in lieu of Section 6A(a) (and the Default Notice shall be deemed to be a Bankruptcy Default Notice) without further notice or action by the parties.

(d) In connection with any purchase of the Power Station pursuant to Section 6A(a) above, GPA may at its option assume the outstanding Credit Agreement Obligations in lieu of payment thereof as (or as part of) the purchase price for the Power Station by so indicating in its Option Notice. If GPA indicates in its Option Notice that it intends to assume the Credit Agreement Obligations, then the Lenders and GPA shall promptly enter into good faith negotiations for the purpose of agreeing on the terms and conditions of such assumption and the terms of the assumed debt (provided that such terms shall be acceptable to all Lenders, the Collateral Agent and GPA in each party's discretion), with the purpose of completing such negotiations and documenting the agreed terms by the Purchase Date. ~~This section shall not relieve GPA from the obligation to pay pursuant to Section 6A(a) the portion of the purchase price, if any, in excess of the Credit Agreement Obligations.~~

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(e) After the occurrence of an Event of Default under the Credit Agreement, the Collateral Agent and the Lenders shall be entitled to exercise any rights or remedies

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provided to them under the Basic Documents, except that the exercise of any right of sale or foreclosure shall be subject to Sections 6A(a) and 6A(b). In the event that GPA shall not deliver an Option Notice during the respective Option Period or Bankruptcy Option Period, or a purchase of the Power Station or of the Basic Documents shall not be completed during the period specified therefor pursuant to Section 6A(a) or 6A(b), then GPA shall have no further rights under this Section 6A to purchase the Power Station or the Basic Documents pursuant to the buyout option set forth herein, but without prejudice to the ability of GPA to buy pursuant to any sale pursuant to or exercise of remedies by the Collateral Agent, and the Collateral Agent and the Lenders shall be permitted to proceed with the sale, foreclosure or other disposition of collateral (including without limitation the Power Station), or the exercise of other remedies, as provided under the Basic Documents.

7. ECA Confirmations. At the request of the Collateral Agent, GPA and Owner hereby make the following confirmations with respect to the ECA:

(a) The "Completion Date" shall not occur unless Owner has obtained and the Project meets the requirements of all final permits, licenses, consents and other governmental approvals (including a final PSD Permit) necessary for the construction and operation of the Power Station (provided that no such permit, license, consent or other governmental approval shall require the Project to incur capital improvements not included in the Specifications or to operate in a manner inconsistent with the Operating Parameters in the ECA or the fuel specifications set forth in the Fourth Schedule to the ECA, except to the extent any additional costs incurred by Owner or impact on the schedule for completion of the Project shall be addressed by a Change Order pursuant to Clause 34 of the ECA).

(b) In providing fuel for testing pursuant to Clause 2.6 of the ECA, GPA shall endeavor to provide such amount of Residual Fuel No. 6 in excess of 4,900 gallons per hour, and shall dispatch the Power Station, as shall be required by Owner as necessary to perform the Guarantee Tests. In providing utilities for Owner pursuant to Clause



2.3 of the ECA, GPA shall provide equipment as necessary to provide construction power at 480v.

(c) All conditions to the Effective Date have been satisfied or have been waived by each of GPA and Owner except (i) in lieu of obtaining the PSD Permit prior to June 1, 1997 (as set forth in the Third Schedule to the ECA), Owner shall, prior to the Effective Date, obtain a Waiver of Section 325 of the Clean Air Act allowing the Owner to proceed with construction of the Project without a PSD Permit that shall be effective for the period of construction of the Project (but shall be replaced by a final PSD Permit by the Completion Date); and (ii) certain permits, approvals and other documents described in the Ninth Schedule to the ECA have not been obtained.

(d) For the purpose of calculating amounts pursuant to Clause 17.3 of the ECA, the clause "unless sooner terminated" in the definition of "Transfer Date" shall be ignored.

(e) Any change order pursuant to Clause 34 of the ECA shall require the consent of the Agent. Owner shall not be obligated to carry out any change requested by GPA or required pursuant to said Clause 34 unless and until an agreement shall have been reached between the parties regarding the schedule and price adjustments arising from such change.

(f) "Unable to commence testing" as that term is used in Clause 11.9 of the ECA shall include the inability to test, or to complete tests, in accordance with the final permits, licenses, consents or other governmental approvals (including the final PSD Permit) necessary for the ownership, construction, testing, operation or maintenance of the Project (provided that no such permit, license, consent or other governmental approval shall require the Project to incur capital improvements not included in the Specifications in the ECA or to operate in a manner inconsistent with the Operating Parameters in the ECA or the fuel specifications set forth in the Fourth Schedule to the ECA, except to the extent any additional costs incurred by Owner or impact on the schedule for completion of the Project shall be addressed by a Change Order pursuant to

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Clause 34 of the ECA).

(g) As soon as practicable, but in any event within ninety (90) days of the date hereof, GPA will review the insurance required under the Credit Agreement and advise whether such insurance is insurance that (i) is the same as or provides greater coverage than GPA would ordinarily maintain with respect to a facility such as the Power Station for the purposes of Clause 16.7 of the ECA and (ii) satisfies the requirements of the Tenth Schedule to the ECA.

(h) In Clause 17.1 of the ECA, the phrase "breaches of any other material obligation under this Agreement" shall be read to include such breaches under the Environmental Indemnity, the MOU and this Consent and Agreement. A notice of a buyout as provided in Clause 17.1 of the ECA in respect of a default by GPA or a circumstance described in Clause 18 of the ECA may only be given by Owner and not by GPA.

(i) The insurance proceeds referenced in Clause 17.6 of the ECA are proceeds of casualty insurance and not proceeds of business interruption, liability or other coverages maintained by Owner.

(j) In the third sentence of Clause 17.7 of the ECA, the fair market value of the Project shall be based on the Project as a going concern entitled to payments in accordance with, and during the remaining term (assuming no termination) of the ECA. In the fourth sentence of such Clause, the reference to "interest" shall include all costs of terminating or amending interest hedging instruments in connection with the repayment of principal of all loans under the Credit Agreement, and shall further include all other fees, costs, and expenses payable to the Collateral Agent and the Lenders pursuant to the Credit Agreement.

(k) In Clause 4.1 of the Eighth Schedule to the ECA: (i) the Contract Capacity Rate is \$17.369/kW/month and (ii) the Availability Factor for the first Contract Year shall equal "1".



8. Sublease Confirmations. At the request of the Collateral Agent, GPA and Owner hereby make the following confirmations with respect to the Sublease:

(a) Owner, its successors and assigns shall be entitled to quiet enjoyment of the Premises without hinderance or interference by GPA, its successors, assigns, employees, agent or representatives, so long as Owner or its successors or assigns are in compliance with the ECA.

(b) Notwithstanding Articles 1 and 2 of the Sublease, the term of the Sublease has commenced and will continue for a period of twenty years from the later of the Target Completion Date (as defined in the ECA) and the Completion Date (as defined in the ECA), as the same may be extended from time to time pursuant to the ECA.

(c) Prior to the occurrence of the Transfer Date and the receipt by Owner of all sums due and owing hereunder and under the ECA and the Sublease: (i) the Sublease and the MOU shall not terminate, (ii) Owner shall not be obligated to transfer ownership of the Power Station or any part thereof, or any of its improvements on the Site, and (iii) Owner shall not be obligated to surrender to GPA the premises leased under the Sublease.

(d) In the event that the Master Lessor shall agree to transfer the fee title to the Premises to GPA, GPA shall, prior to accepting such fee title, obtain such approvals as shall be necessary for GPA to grant a lease of the Premises to Owner, and shall negotiate with Owner in good faith a lease for the Premises on terms acceptable to each party (the "Replacement Lease"). Concurrently with the transfer of the fee title to the Premises to GPA, the Master Lease and the Sublease shall be terminated and GPA and Owner shall execute and record a memorandum of the Replacement Lease. GPA shall immediately notify Owner and the Collateral Agent in writing if GPA obtains or assumes fee title to, or becomes the fee owner of, the property comprising the Premises or any part thereof.

(e) The indemnification obligations of Owner pursuant to Articles 13, 20 and 21 of the Sublease shall (i) insofar as they extend to the Master Lessor, be several and



not joint with GPA, and (ii) as between GPA and Owner, be subject to and limited by Clause 15 of the ECA. The Lenders and the Collateral Agent, and their respective successors and assigns, shall be deemed parties entitled to indemnity by GPA under the Environmental Indemnity.

(f) The reference in Article 9 of the MOU to Article 23.01(d) of the Sublease is intended to identify an Owner default and not any remedy under the Sublease, and the remedies of Clause 17.7 of the ECA shall be the exclusive remedy of GPA for a default by Owner under the Sublease.

(g) GPA consents to the construction of the Power Station on the Premises as contemplated by the ECA.

(h) Notwithstanding Article 35 of the Sublease, the entire agreement of GPA and Owner is set forth collectively in the Assigned Agreements and this Consent and Agreement.

9. Arrangements Regarding Payments. All payments to be made by GPA to the Owner (if any) under the Assigned Agreement shall be made in lawful money of the United States of America in immediately available funds for deposit into such account and with such Person and/or at other address as the Collateral Agent may from time to time specify in writing to GPA, and shall include a statement or other notation from GPA stating that such payments are made under the relevant Assigned Agreement. GPA agrees that all payments under the ECA shall be made without deduction for or on account of setoff, counterclaim, tax or otherwise, notwithstanding the final sentence of Clause 11.7 of the ECA.

10. Miscellaneous.

(a) This Consent and Agreement shall be binding upon the successors and assigns of GPA and Assignor and shall inure, together with the rights and remedies of the Collateral Agent hereunder, to the benefit of the Collateral Agent, the Lenders and their respective permitted successors, transferees and assigns. This Consent and Agreement may be executed in one or more counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

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(b) No amendment or waiver of any provisions of this Consent and Agreement or consent to any departure by GPA from any provisions of this Consent and Agreement shall in any event be effective unless the same shall be in writing and signed by the Collateral Agent and, in the case of an amendment, waiver or consent sought prior to the occurrence of a Event of Default, the Owner (provided that such right of the Owner to consent to an amendment, waiver or consent shall be solely with respect to amendments, waivers or consents which could have a material adverse affect on the Owner's rights under any Assigned Agreement), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given. No failure on the part of the Collateral Agent to exercise, and no delay in exercising, any right under this Consent and Agreement shall operate as a waiver of such right nor shall any single or partial exercise of any right under this Consent and Agreement, preclude any further exercise of such right or the exercise of any other right. The rights, remedies, powers and privileges provided in this Consent and Agreement are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

(c) THIS CONSENT AND AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE TERRITORY OF GUAM.

(d) EACH OF GPA, THE COLLATERAL AGENT AND THE OWNER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS CONSENT AND AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(e) All notices to be given under this Consent and Agreement shall be in writing and shall be delivered personally, sent by certified or registered first-class mail, postage prepaid, or dispatched by tested telex or telefacsimile, or courier to the intended recipient at its address as set forth on the signature pages below, and all payments to be made under this Consent and Agreement shall be made by wire transfer of immediately available funds or check representing immediately collectible funds to the account or address of the intended recipient as set forth on



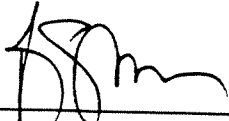
the signature pages hereto, unless the recipient has given notice of another address or account for receipt of notices or payments.


(f) To the extent that GPA may in any jurisdiction claim for itself or its assets or reviews immunity from suit, execution, attachment (whether in aid of execution, before judgment or otherwise) or other legal process and to the extent that in any such jurisdiction there may be attributed to GPA or its assets or revenues such immunity (whether or not claimed) GPA agrees not to claim and irrevocably waives such immunity to the full extent permitted by the laws of such jurisdiction.



IN WITNESS WHEREOF, the undersigned by its officer duly authorized has caused this Consent and Agreement to be duly executed and delivered as of the first date written above.

GUAM POWER AUTHORITY

By   
Name: Ricardo S. Unpingco  
Title: General Manager


By   
Name: EDUARDO R. ILA  
Title: Chairman

Address for Notices:

Guam Power Authority  
P.O. Box 2977  
Agana, Guam 96910

Attention : General Manager  
Telephone : 671-649-6875  
Facsimile : 671-649-6942

ENRON DEVELOPMENT PITI L.L.C.

By   
Name: David Howe  
Title: Authorized Representative

Address for Notices:

545 West Marine Drive  
Anigua, Guam 96910

Attention : President  
Telephone : 472-1465



Facsimile : 671-472-1666

With copies to:

Enron International Inc.  
333 Clay Street, Suite 1700  
Houston, Texas 77002

Attention :  
Telephone : 713-646-7461  
713-646-7581  
Facsimile : 713-646-7768  
713-646-7756

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ACCEPTED:

ABN AMRO BANK N.V.,  
in capacity as Collateral Agent

By \_\_\_\_\_  
Name:  
Title:

By \_\_\_\_\_  
Name:  
Title:

Address for Notices:

ABN AMRO Bank N.V.  
New York Branch  
1325 Avenue of the Americas, 9th Floor  
New York, New York 10019

Attention : Agency Services  
Telephone : (212) 314-1724  
Facsimile : (212) 314-1711

With a copy to:

ABN AMRO Bank N.V.  
135 South LaSalle Street, Room 711  
Chicago, Illinois 60603

Attention : Project Finance  
Telephone : (312) 904-2562  
Facsimile : (312) 904-6387